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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 555

GEORGIA PUBLIC SERVICE COMMISSION, JAMES A. PERRY, ALBERT J. WOODRUFF, ET AL., ETC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

FILED NOVEMBER 18, 1930

(35,477)

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VOL. I

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IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 563

GEORGIA PUBLIC SERVICE COMMISSION and JAMES A. PERRY, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, as Commissioners Thereof, Petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT—Filed Feb. 18, 1930

To the Honorable the Judges of the District Court of the United States for the Northern District of Georgia, Atlanta Division:

James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, as Commissioners, constituting the Georgia Public Service Commission, and the said Georgia Public Service Commission, bring this their bill of complaint against the United States of America and Interstate Commerce Commission, and respectfully show:

[fol. 2] I

That the petitioners, James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, are citizens of the State of Georgia and are the duly elected, qualified and acting Commissioners constituting the Georgia Public Service Commission.

The said petitioner, Georgia Public Service Commission, is an administrative tribunal created and existing under the constitution and statutes of the State of Georgia, having its official residence in the City of Atlanta, which is in the Northern District of Georgia and so within the district of this Court.

II

This suit is brought to enjoin, set aside, annul and suspend certain orders of the Interstate Commerce Commission and is instituted under the provisions of the Urgent Deficiency Appropriations Act, approved October 22, 1913 (38 Stat. L., 219; Chap. 32), and petitioner invokes the jurisdiction of this court under the provisions of said Act and of the so-called Commerce Court Act (36 Stat. L., 539), and of Section 207 of the Judicial Code.

Defendant, United States of America, is made such by virtue of the provisions of the aforesaid acts. The defendant, Interstate Commerce Commission, is an administrative tribunal created by Act of Congress, approved February 4, 1887 (24 Stat. L., 379), as later amended (hereinafter referred to as the Interstate Commerce Act), whose duties and powers are defined in such Act and in Acts amendatory thereof and supplemental thereto.

[fol. 3] III

Heretofore, on, to-wit, the 5th day of October, 1925, the said Interstate Commerce Commission entered an order which instituted a proceeding of inquiry upon petition filed in that behalf by Atlantic Coast Line Railroad Company and others (the said petitioners being common carriers engaged in the transportation of property by railroad in interstate commerce and as such subject to the Interstate Commerce Act). The purpose of said proceeding of inquiry was stated in said order, namely, to determine whether the then existing carload rates on sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in carloads (either and all of said materials are for convenience referred to hereafter by the term sand and gravel, etc.), required by an order theretofore entered by petitioner, Georgia Public Service Commission, under date of February 25, 1925, to be maintained by said Atlantic Coast Line Railroad Company and others for intrastate movements at said hearing testimony was offered by the aforesaid petiundue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or in any undue, unreasonable, or unjust discrimina-

tion against interstate or foreign commerce; and if so, what rates or what maximum rates, or minimum rates, or maximum and minimum rates, should be prescribed to be charged to cure the situation. All railroads operating in the State of Georgia subject to the jurisdiction of the Interstate Commerce Commission were made respondents to this said proceeding, and the Governor of Georgia and the Georgia Public Service Commission were given due notice thereof. The said investigation was assigned Docket No. 17517.

[fol. 4]

IV

Certain formal complaints were filed with said Interstate Commerce Commission by various parties engaged in the shipment of sand and gravel, etc., including a complaint filed with said Commission and assigned by it Docket No. 17763, wherein Roquemore Gravel Company, a corporation, with principal office in the City of Montgomery, Alabama, and Dixie Sand & Gravel Company, a corporation, with principal office and place of business at Chattanooga, Tennessee, were petitioners and certain railroad companies subject to the Act as common carriers by railroad were named as respondents; the said respondents constituted some, but not all, of the railroad companies operating within the State of Georgia, and some railroad companies not having lines or operating within said State of Georgia.

The aforesaid formal complaints under Docket No. 17763, and in certain other proceedings were consolidated by the Interstate Commerce Commission for hearing and investigation with its aforesaid proceeding of inquiry under No. 17517.

V

Thereafter, the Interstate Commerce Commission held a public hearing at Atlanta, Georgia, before Ernest I. Lewis, a commissioner of said Commission, and E. H. Waters, a special examiner thereof, duly appointed and qualified under Section 20 of said Act for the taking of testimony and at said hearing testimony was offered by the aforesaid petitioners, Atlantic Coast Line Railroad Company, et al., on whose motion the investigation in No. 17517 had been entered as aforesaid, by the complainants in No. 17763, by

the Georgia Public Service Commission and by various other parties, interveners and respondents in said proceedings.

[fol. 5] VI

Thereafter, following briefs and oral argument, the Interstate Commerce Commission entered its report dated January 21, 1927, reported in Volume 122 of I. C. C. Reports, at pages 133 to 176, inclusive, and its formal order dated January 21, 1927, entitled in No. 17517 and in No. 17763 and in other proceedings consolidated therewith. The said report and order prescribe certain bases of rates, as maximum rates, to govern the interstate transportation of sand and gravel, etc., between points in the State of Georgia and points in other states in southern territory, as defined therein. The report and order contain no findings against intrastate rates maintained or charged within the State of Georgia, and state that the order of the Georgia Public Service Commission which had been entered February 25, 1925, could not be found to have brought about a rate situation which had in the past been unjustly discriminatory against interstate commerce. A copy of the aforesaid report and order of January 21, 1927, is attached hereto, marked as Exhibit A, and made a part hereof.

VII

Theretofore, your petitioner, Georgia Public Service Commission, pursuant to its statutory duties, had entered its order dated February 25, 1925, and effective April 1, 1925, wherein said Commission had approved a general revision of rates on sand and gravel, etc., between points in the State of Georgia, by railroad, over all of the railroads in said state, in intrastate commerce.

[fol. 6] VIII

Thereafter, following the Interstate Commerce Commission's report and order of January 21, 1927, Exhibit A hereto, petitioner Georgia Public Service Commission entered its further order dated the 13th day of March, 1928, prescribing maximum rates for the intrastate transportation of sand and gravel, etc., over all of the railroads in the

State of Georgia. A copy of said order is attached hereto as Exhibit B, and made a part hereof.

IX

Thereafter, the Interstate Commerce Commission entered its further order dated the 4th day of June, 1928, reopening the said proceedings for further hearing and investigation in respect of certain issues only, that is to say for the sole purpose of determining whether the rates and minimum weights required by the aforesaid order of the Georgia Public Service Commission to be maintained by aforesaid railroad companies respondents therein, on intrastate shipments within Georgia, of sand and gravel, etc., in relation to the interstate rates and minimum weights prescribed by the Interstate Commerce Commission, will cause any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce. A copy of the said order of June 4, 1928, is attached hereto as Exhibit C, and made a part hereof.

[fol. 7]

X

Thereupon, the matter was heard further at Atlanta before the aforesaid Examiner Waters, duly appointed and qualified as aforesaid, on, to-wit, the 26th, 27th and 28th days of December, 1928. At said hearing further testimony was received from various parties to the hearing, including petitioner Georgia Public Service Commission; and material and competent evidence which was tendered by your petitioner was refused by the Examiner and not received; and incompetent, irrelevant, and immaterial evidence offered by carriers was received by the Examiner over the objection and protest of counsel for Georgia Public Service Commission, to the prejudice of said petitioner.

XI

Thereafter, the Interstate Commerce Commission entered its supplemental report and order dated December 9, 1929, and reported in Volume 160, I. C. C. Reports, at page 309.

A copy of said report and order is attached hereto as Exhibit D, and made a part hereof. The Interstate Commerce Commission therein undertakes to require the respondent railroad companies to establish on or before March 3, 1930, and thereafter to maintain and continue in force and effect indefinitely, until the further order of said Commission, and to apply to the intrastate transportation of sand and gravel, etc., between points in the State of Georgia, rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities, not exceeding the rates set forth in the appendix to the order; and the appendix sets forth distance scales of rates to be applied according to a certain formula as set forth in the report, not governed by the mileages over the actual routes over which the transportation is performed.

[fol. 8]

XII

Theretofore, the Interstate Commerce Commission made an investigation into rates within and into the State of Florida not germane or relevant to any issue of the propriety, reasonableness and lawfulness of the rates on aforesaid materials within the State of Georgia, or in interstate commerce into or out of said State of Georgia; and the Commission had entered its supplemental report of December 21, 1927, with respect to said further investigation on said issues, which report is not relevant or material to any issues involving the propriety, reasonableness and lawfulness of the rates on aforesaid materials within the State of Georgia, or in interstate commerce into or out of said State of Georgia. It is reported in Volume 140 of said I. C. C. Reports, beginning at page 85.

XIII

Following the Interstate Commerce Commission's aforesaid report and order of December 9, 1929, Exhibit D hereto, petitioner Georgia Public Service Commission filed with said Interstate Commerce Commission its petition for rehearing wherein various assignments of error were made against the Commission's aforesaid report and order of December 9, 1929, with the prayer that the same should be vacated and set aside and other relief was prayed, as

set forth in said petition. A copy of the aforesaid petition is attached hereto as Exhibit E, and made a part hereof.

XIV

The aforesaid petition for rehearing by Georgia Public Service Commission, Exhibit E hereto, was denied by the Interstate Commerce Commission in order entered the 3d day of February, 1930.

[fol. 9]

XV

Your petitioners are informed and believe that the Atlantic Coast Line Railroad Company and various other railroads named as defendants or respondents in the aforesaid orders of the Interstate Commerce Commission, are about to cancel and annul their present rates for the intrastate transportation of sand and gravel, etc., within the State of Georgia, which schedules comply or purport to comply with the aforesaid order of petitioner, Georgia Public Service Commission, dated March 13, 1928, Exhibit B hereto.

Your petitioners are further informed and believe that said Atlantic Coast Line Railroad Company and other railroads so named in said orders are about to establish and put in force and apply for the intrastate transportation of said materials on their lines within the State of Georgia rates which are higher than permitted by the lawful orders of the Georgia Public Service Commission and which are ostensibly required by the terms of the aforesaid orders of the Interstate Commerce Commission. The said schedules if and when so established or applied will violate the statutes of the State of Georgia and the constitution of said state governing transportation by railroad in intrastate commerce in said state.

XVI

Therefore, having exhausted their efforts and remedies under the Interstate Commerce Act, and with the Interstate Commerce Commission, your petitioners herein respectfully institute this proceeding for the purpose of annulling and setting aside the aforesaid reports and orders of the Interstate Commerce Commission and to enjoin the enforcement thereof in so far as such reports and orders re-

[fol. 10] quire or may require the Atlantic Coast Line Rail-

road Company and any and all other railroad companies within the State of Georgia, jointly and severally, to establish, put in force and maintain any rates whatsoever for the transportation of sand and gravel, etc., in intrastate commerce within the State of Georgia.

As grounds for said prayer, your petitioners respectfully show unto the court that the said reports and orders of the Interstate Commerce Commission are arbitrary and unreasonable, beyond the power of the Interstate Commerce Commission, and wholly invalid and unlawful in the following respects and for the following reasons, among others:

(a) Aforesaid reports and orders constitute an unlawful invasion of the sovereign rights of the State of Georgia reserved to it by the Constitution of the United States, and of the citizens of the said State of Georgia, and are without warrant or authority under the Constitution of the United States.

(b) Aforesaid reports and orders constitute an unlawful exercise of power by said Interstate Commerce Commission, without warrant or authority under the Constitution of the United States or the Interstate Commerce Act, as amended.

(c) Aforesaid reports and orders are arbitrary and unlawful in that in substance they purport and seek to restrain and enjoin the Georgia Public Service Commission from requiring the railroads to charge, for intrastate transportation of aforesaid materials within the State of Georgia, rates which are the same in amount for corresponding distances of actual transportation, or on the same basis, as interstate rates which the aforesaid carriers are permitted by said Interstate Commerce Commission to continue charg-
[fol. 11] ing for interstate transportation into and out of said State of Georgia and in territory contiguous thereto.

(d) Aforesaid reports and orders are arbitrary and unlawful in that they purport to and do impose a formula to govern rates for transportation of said materials within the State of Georgia, not in harmony with a lawful order heretofore entered by the Georgia Public Service Commission prescribing maximum rates for said intrastate transportation; and said Interstate Commerce Commission has

no power conferred on it by law to prescribe a rate-making formula, as such, its authority being limited to prescribing reasonable rates, as maximum rates or as minimum rates.

(e) Aforesaid reports and orders are arbitrary and unlawful in that they prescribe rates for actual services of transportation over actual routes of movement in intrastate commerce within the State of Georgia and also in interstate commerce, to be made with regard to fictitious mileages, that is to say, with regard to the distances over routes that are not used and which neither the Interstate Commerce Commission nor the Georgia Public Service Commission could require the carriers to operate as through routes for the transportation of property without infringement of the constitutional rights of said carriers and of their rights under paragraph (4) of Section 15 of the Interstate Commerce Act.

(f) The aforesaid reports and orders are erroneous in law and the Commission was without jurisdiction to enter them in so far as they purport to fix rates for the intrastate transportation aforesaid, because under the Commission's order instituting the aforesaid inquiry in No. 17517, under the allegations of the complaint in the aforesaid case No. [fol. 12] 17763, and under the aforesaid order of June 4, 1928, reopening the said proceedings for further hearing and investigation, the issues were limited so that the Commission did not have jurisdiction to enter a valid order under the terms of Section 13, or of any other section of the Interstate Commerce Act.

(g) Aforesaid reports and orders are erroneous and invalid because the record of evidence on which they were entered does not show the transportation conditions, or the circumstances and conditions under which aforesaid materials actually are transported for the respective intrastate movements within the State of Georgia and interstate movements into and out of said state, and therefore the record affords no basis for determining the similarity or dissimilarity of the actual services under said intrastate rates, on the one hand, and under the interstate rates, on the other hand.

(h) The report and order are erroneous because there is no substantial evidence of record in the proceedings wherein

they are entered warranting or requiring a finding that the rates for the transportation of the materials in question now charged, or which are made or imposed by authority of the State of Georgia, or any of said rates, for said intrastate transportation, cause any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, or any burden upon interstate or foreign commerce; and in fact, the aforesaid intrastate rates are not preferential, or prejudicial, or discriminatory, or burdensome.

(i) The aforesaid reports and orders are erroneous and invalid because the Interstate Commerce Commission [fol. 13] therein undertakes to require reductions in intrastate rates within the State of Georgia, which are wholly beyond the jurisdiction of said Commission to reduce; and because the rates therein required tend to create and will create unjust discriminations and undue preferences as among different and competing shippers and producers of said materials in Georgia, in violation of the statutes of said state governing such intrastate transportation.

(j) The aforesaid reports and orders are erroneous and invalid because they are not supported by evidence and they are contrary to the manifest weight of the evidence in these proceedings.

(k) Aforesaid reports and orders are unlawful and invalid for other and manifest errors of law and of fact.

Wherefore petitioners respectfully pray:

1. That process may issue against the defendants, United States of America and Interstate Commerce Commission, an administrative tribunal of the United States, with service thereof and of this bill of complaint in the manner prescribed by statute.

2. That this Honorable Court will grant to petitioners herein an interlocutory order, setting aside and enjoining enforcement of the aforesaid orders of the Interstate Commerce Commission or so much thereof as require or au-

thorize the railroad common carriers therein named as defendants to cease and desist from maintaining their present rates and to establish, put in force and maintain in lieu thereof, rates for the transportation of chert, sand, gravel, crushed stone, slag, and analogous materials, in carloads, moving in intrastate commerce within the State of Georgia, on the basis prescribed in said orders.

3. That upon final hearing, there will be made and entered a decree and order of this Honorable Court annulling, [fol. 14] setting aside and enjoining the aforesaid reports and orders of the Interstate Commerce Commission wherein said Commission has undertaken to authorize and require the defendant common carrier railroads named in its aforesaid orders to establish, put in force and maintain certain rates for the transportation of said materials, in carloads, in intrastate commerce within the State of Georgia, and to cease and desist from charging any rates lower than the aforesaid basis so prescribed by said Commission.

4. That petitioners may have such other and further relief in the premises as to the court shall seem meet and just and as equity may require.

For all of which petitioners forever pray.

Respectfully submitted.

S. J. Smith, Luther M. Walter, Nuel D. Belnap, John S. Burchmore, Solicitors for Petitioners.

[fol. 15] *Duly sworn to by James A. Perry. Jurat omitted in printing.*

[fol. 16] EXHIBIT A TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 17517[1]

Rates on Chert, Clay, Sand, and Gravel Within State of Georgia

Submitted November 13, 1926. Decided January 21, 1927

1. Maximum reasonable interstate rates based on single-line and joint-line distance scales prescribed on sand, gravel, crushed stone, and slag, for uniform application over standard lines from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia and Mississippi, between points in Georgia, and between points in Georgia and other points in southern territory, except points in Florida.

2. Certain so-called short lines accorded arbitraries over the rates prescribed for standard lines.

3. Rates on gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia and Mississippi also found unduly prejudicial to the extent they exceed, distance considered, rates contemporaneously maintained on slag from Birmingham and certain other Alabama points to same destinations.

---

[1] This report also embraces No. 17699, Roquemore Gravel Company et al. v. Atlanta, Birmingham & Atlantic Railway Company et al.; No. 17699 (Sub-No. 1), Same v. Atlanta, Birmingham & Atlantic Railway Company et al.; No. 17689, Roquemore Gravel Company et al. v. Atlanta, Birmingham & Atlantic Railway Company et al.; No. 17763, Same v. Atlanta, Birmingham & Atlantic Railway Company et al.; No. 17764, Dixie Sand & Gravel Company v. Atlanta, Birmingham & Atlantic Railway Company et al.; No. 17764 (Sub-No. 1), Same v. Atlanta, Birmingham & Atlantic Railway Company et al.; and Investigation and Suspension Docket No. 2470, Sand, Gravel, and Slag from Alabama and Tennessee to points in Georgia.

4. Proposed increased rates on slag from Copperhill, Tenn., to points in Georgia, found not justified and ordered canceled, without prejudice to establishment of rates on basis found reasonable.

5. Complaint in No. 17689 dismissed.

6. Intrastate rates in Mississippi not shown to result in undue prejudice to complainants.

Charles E. Cotterill and M. M. Caskie for complainants and Tennessee Copper Company; and J. L. Griffith for complainant Dixie Sand & Gravel Company.

[fol. 17] Frank E. Gwathmey for Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Central of Georgia Railway Company, and others; E. D. Mohr for Louisville & Nashville Railroad Company; H. L. Walker for Southern Railway system lines and Mobile & Ohio Railroad Company; John A. Streyer for American Short Line Railroad Association; and Roy Pope for Atlanta, Birmingham & Atlantic Railway Company and its receiver.

A. G. Patterson and J. H. Alldredge for Alabama Public Service Commission; M. C. Moore, Rush H. Knox, and B. F. Martin for Mississippi Railroad Commission and attorney general of Mississippi; James A. Perry, Walter R. McDonald, and E. M. Price for Georgia Public Service Commission; Edwin Brooker for Atlanta Sand & Supply Company, Allen Sand Company, Stone Mountain Granite Corporation, and others; John S. Burchmore for Tri-State Road Material Association; B. F. Martin for Colbert Limerock Asphalt Company, Alabama Rock Asphalt Company, and Uvalde Paving Company; T. P. Goodwin for Simpson County Granite Company; E. Del Wood and B. R. Sheperd for Chattanooga Manufacturers Association; C. R. Moffett for Tennessee Copper Company; C. E. Jones for Birmingham Traffic Association; A. J. Ribe for Birmingham Slag Company and Montgomery Gravel Company; Edgar Watkins, H. T. Moore, and E. L. Hart for State Highway Commission of Georgia, city of Atlanta, counties of Fulton and De Kalb, and Atlanta Freight Bureau; R. A. McCaffrey for Alabama Iron & Steel Shippers' Conference; J. B. Dunlap for B. Mifflin Hood Brick Company; Albert Mayer for C. W. Moore, Central of Georgia Sand Company, and

Acme Sand & Supply Company; Otho M. Graves for National Crushed Stone Association; E. J. Cosgrove for Florida Rock Products Company; and H. L. Brooks for [fol. 18] North Georgia Marble Products Company, Thompson Weinman & Company, and Ladds Lime & Stone Company.

Report of the Commission

LEWIS, Commissioner:

Exceptions to the report proposed by the examiner were filed by complainants, the carriers, and various interveners and oral argument was had. Our conclusions differ somewhat from those which the examiner recommended.

No. 17517 is a proceeding instituted by us upon petition filed on behalf of the Atlantic Coast Line, hereinafter called the Coast Line, and eight short-line carriers[2] operating in the State of Georgia to determine whether the present carload rates on chert, clay, sand, gravel, and other allied commodities[3] required by the Georgia Public Service Commission order of February 25, 1925, to be maintained by petitioners for intrastate movements between points in Georgia result in any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or in any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and if so, what rates or what maximum or minimum, or maximum and minimum, rates shall be prescribed to be charged to cure the situation. All railroads operating in the State of Georgia subject to our jurisdiction were made

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[2] Savannah & Statesboro Railway Company; Greene County Railroad Company; Georgia Northern Railway Company; Flint River & Northeastern Railroad Company; Georgia, Ashburn, Sylvester & Camilla Railway; Macon, Dublin & Savannah Railroad; Georgia, Florida & Alabama Railway; and Tallulah Falls Railway Company.

[3] Chert, clay, gravel (washed or unwashed), sand (common) straight, or sand and gravel mixed, shale, slag (granulated, lump, or pulverized), stone, granite (crushed), flagging rubble, or stone screenings.

respondents to this proceeding, and the Governor of Geor-
[fol. 19] gia and the Georgia Public Service Commission were given due notice.

The complaint cases and the investigation and suspension proceeding were all heard with the title case on one record, and all will be disposed of in one report.

In Nos. 17699, 17699 (Sub-No. 1), 17764, and 17764 (Sub-No. 1), the allegations are in substance that the rates on sand and gravel maintained by the defendants from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia, Florida, and Mississippi are unreasonable, and as to gravel also unduly prejudicial in favor of slag shipped from Birmingham, Ala., and other producing points, such as Gadsden and Anniston, Ala., and Copperhill, Tenn. In No. 17763, it is alleged that the rates on sand and gravel from Montgomery and Chattanooga to destinations in Georgia and Mississippi are unreasonable and unduly prejudicial in favor of intrastate shippers of the same commodities between points within the said States and also in favor of shippers of crushed stone intrastate between points in Georgia. In No. 17689, it is alleged that the rate of 79 cents per ton maintained on sand from certain specified points in Georgia located on the Central of Georgia, and the Atlanta, Birmingham & Atlantic to Birmingham is less than a just and reasonable rate. We are asked in all of the complaint cases to require the establishment of just, reasonable, and nonprejudicial rates for the future.

The only issues remaining for determination in Investigation and Suspension Docket No. 2470 involves the propriety of certain schedules by which the Louisville & Nashville proposes to increase the rates on slag from Copperhill, Tenn., to certain points in Georgia. Upon protest of the Tennessee Copper Company and others the operation of the schedules was suspended by us and subsequently voluntarily postponed by the respondent to February 27, 1927.

[fol. 20] Various parties intervened in behalf of their respective interests and formal petitions of intervention were filed on behalf of the following: City of Atlanta, Fulton and DeKalb Counties, Ga., State Highway Commission of Georgia, Atlanta Freight Bureau, National Crushed Stone Association, Birmingham Slag Company, Montgomery Gravel Company, Colbert Limerock Asphalt Company, Ala.

bama Rock Asphalt Company, Uvalde Paving Company, in all cases; the Alabama Public Service Commission, in all formal complaint cases; Tri-State Road Material Association, in formal complaint cases except Nos. 17764 and 17764 (Sub-No. 1); Tennessee Copper Company, Incorporated, in Nos. 17763, 17764, and 17764 (Sub-No. 1); Chattanooga Manufacturers' Association in Nos. 17764 and 17764 (Sub-No. 1); Birmingham Traffic Association in Nos. 17699 and 17699 (Sub-No. 1); Alabama Iron & Steel Shippers' Conference, C. W. Moore, Central of Georgia Sand Company, and Acme Sand & Supply Company in No. 17689; and in No. 17763 various interests engaged in the production and sale of crushed stone at Stone Mountain, Stockbridge, Lithonia, Macon, and Atlanta, Ga., and at Columbia and Trenton, S. C., and certain interests engaged in the production and sale of sand at Gaillard and Rollo, Ga.

Rates are herein stated in dollars and cents per ton of 2,000 pounds. Only carload rates are involved.

The testimony relates almost entirely to rates on gravel, crushed or broken stone, and slag, in their different phases, and to sand, and while certain other commodities of minor importance are included in some of the exhibits and for that reason appear in the report, the parties manifest no particular interest in them. Our consideration and findings will be confined to the commodities above named.

The issues presented in these proceedings are somewhat complex. Much testimony and voluminous exhibits were [fol. 21] introduced. The record as made shows the existence of a keen competitive situation in the production and sale of these commodities and calls for a consideration of the rates on them throughout a substantial part of southern territory.*

The commodities considered in these proceedings are used chiefly in the building of highways and in concrete con-

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* Southern territory, as the term is used in this report, is roughly the territory east of the Mississippi River and south of the Ohio River and the line of the Norfolk & Western from Bristol, Tenn.-Va., to Norfolk, Va. It does not include the eastern corner of Kentucky served by the Chesapeake & Ohio. It is the territory in which freight rates are generally governed by the southern classification.

struction work. The amount of construction of improved highways in the South has been and is increasing from year to year, and the tonnage transported by the southern carriers of these commodities has assumed large proportions and is a material revenue producer. Exhibits submitted of record show that Class I railroads during the year 1924 originated in the southern district, exclusive of the Pocahontas region, 23,700,740 tons of commodities, which are classed under the general description of clay, gravel, sand, and stone. This tonnage was exceeded only by that of products of the forest, and of bituminous coal. The commodities considered are among the lowest valued offered for transportation and will not move except at comparatively low rates. They are transported generally in open-top cars, load to capacity of the car, and move with little risk of damage or loss. Crushed stone, slag, and washed gravel compete in concrete construction and in the building of hard-surfaced roads. Clay gravel is described as a commodity that carries a certain amount of clay and other ingredients which serve as a natural binder, whereas unwashed gravel is composed of sand and gravel. Clay gravel, without the addition of any other ingredient, is used extensively for the building of roads in the South. Roads so constructed cost much less than do those of concrete or mac- [fol. 22] adam construction. Therefore in the building of roads, clay gravel, crushed stone, slag, and washed gravel compete with each other in that the choice of one for a particular project renders the use of the other practically unnecessary. The record leaves no doubt of actual and active competition between all of these commodities, except possibly sand. The use of sand is necessary as a filler in forming the coarse aggregate for concrete or hard-surface construction work, and as it is of comparatively low value there is apparently no practicable substitute for it.

Sand and crushed stone are produced at numerous points in the South. Gravel is produced at fewer points. The Montgomery district produces more sand and gravel than any other district in the South. For example, it was estimated by a witness for complainant, Roquemore Gravel Company, located at Montgomery, and a large producer of

washed gravel, in which production sand is a by-product, that the Montgomery district produces from 1,500 to 1,800 cars of sand and gravel per week. However, assuming 50 tons to a car, this estimate appears excessive in view of the fact that an exhibit of record shows that the total production of sand and gravel in Alabama for the year 1923 was but 1,829,559 tons. Sand and gravel is also produced at Chattanooga. Sand as a chief product and also crushed stone are produced at numerous points in Georgia. Georgia produces no washed gravel or slag, and such products, when needed, are purchased from without the State. The chief points of production of crushed stone in Georgia are located in the Stone Mountain and Lithonia districts near Atlanta. There are also quarries near Macon at such points as Holton and Toomsboro, and in the northwestern part of the State at Graysville, Ladds, and Chestatee. Sand in large quantities is produced at such points as Rollo, Gaillard, Howard, and Junction City, Ga. The two points first men- [fol. 23] tioned are about 95 miles from Atlanta and the other two about 165 miles via the Central of Georgia from that point. Sand is produced at various other points in Georgia. Sand is also produced in large quantities in Florida, and both sand and gravel at numerous points in Mississippi. Great quantities of crushed stone, sand, and gravel are produced in the Carolinas. Large quantities are produced around Columbia, S. C. Slag is a by-product of iron and steel production and is produced chiefly in the Birmingham district. It is also produced at Copperhill. It was estimated that 1,750,000 tons of slag is produced in the Birmingham district per year. Appendix A shows most of the points of production in the South of the respective commodities with State and railroad located.

Producers of these various commodities naturally seek to reach the markets of large consumption, and the evidence shows that the chief consuming markets in the South are the Atlanta and Birmingham districts. Florida is likewise sought as a market for gravel, slag, and crushed stone.

Values

At a conference between the parties held at the opening of the hearing agreement could not be reached as to the

average values of the different commodities at shipping points throughout the territory here considered. The testimony produced shows in numerous instances substantial differences in prices as between different producers of the same commodity, and also a considerable range of prices at the respective points of production. Competitive conditions have much to do with price levels. Summarizing the testimony of various witnesses upon this question it appears that the prevailing average range and the general average of prices in cents per net ton at shipping point approximate those shown below.

[fol. 24]

Commodity	Average range	General average
	Cents	Cents
Sand	20 to 50	35
Clay gravel	25 to 45	35
Washed gravel	40 to 80	60
Crushed rock	105 to 165	135
Slag (crushed and screened)	As high as 135	75
Slag (bank run)	20 to —	

Due to the numerous points of sand production scattered throughout southern territory that commodity moves shorter distances on the average than does gravel. There is apparently an overproduction of sand in the Montgomery district, and the evidence of the Montgomery complainant, which as stated, produces sand as a by-product, is that this company sells sand at prices ranging from 15 to 20 cents, except when sold in the Montgomery district where the price is from 10 to 15 cents higher, and when shipped to Birmingham, where as much as 30 cents is received. Crushed stone is the highest-priced commodity here considered, which is due to its higher cost of production. For this reason it has a natural disadvantage in competing with washed gravel and slag. The evidence indicates that crushed stone produced in Georgia sells on the average somewhat below that produced in the Carolinas. The evidence as to unwashed gravel is meager. One witness testified that it sells for about the same as clay gravel.

Rates

The evidence produced by the trunk-line carriers in these proceedings shows that they now publish for general ap-

plication throughout the territory here involved interstate distance scales of rates which as a rule are applicable alike on all these commodities. The State commissions also have generally prescribed distance scales for intrastate application and under these scales certain of these commodities are often accorded lower rates than others. Some of the [fol. 25] Southern States permit and some of the Southern State commissions have prescribed lower scales of rates for application when the commodities are consigned to State, county, or municipal authorities, referred to herein as municipal rates. No municipal rates, however, are maintained in Georgia. The granting of such reduced rates is also permissible under the interstate commerce act. Their extended application to this traffic, which moves in great volume, must result in breaking down any general scale that may be prescribed.

It was testified for the various trunk-line carriers that, while there are some exceptions, as a general rule their interstate scales, or rates based thereon, are being applied to the movement of these commodities between points in the South. The exceptions as shown, however, are numerous and very important. The record shows that due to the competition between shippers and their desire to reach distant and important markets, as well as to the competition between carriers, numerous specific rates to meet particular situations are now in effect to the markets of large consumption, which rates are far below the carriers' interstate scales and show little regard, if any, for distance. Such rates are apparently moving a large tonnage of these commodities in the South. Viewing the rate situation both interstate and intrastate as disclosed by this record, it cannot be said to be harmonious as applied to the actual movement of these commodities throughout the territory here considered.

One of the strongest arguments in behalf of a reasonably low general scale on these low-grade commodities is that it would afford little justification for municipal and low competitive point-to-point rates, the maintenance of which results in shifting to other traffic the burden of making up for loss of revenue caused thereby.

As a result of a petition filed by Georgia carriers, the Georgia commission in 1917 undertook to revise all in-

[fol. 26] trastate class and commodity rates, but due to subsequent Federal control its order never went into effect. In 1921 the Georgia commission directed the Georgia carriers to submit schedules of class and commodity rates designed to remove all existing discriminations and at the same time preserve the carriers' existing revenues. Extensive hearings were held and intrastate rates in Georgia on classes and on various commodities were prescribed. On February 25, 1925, the Georgia commission ordered a revision as of April 1, 1925, of the rates on the commodities here under consideration. As a result of this order the Coast Line and the eight short lines above mentioned filed the petition which resulted in our investigation in No. 17517.

Prior to April 1, 1925, there was in effect for application between points on standard lines within Georgia a maximum class P commodity scale of rates applicable to intrastate movements of most of these commodities. This scale was equivalent to that prescribed by the Georgia commission in 1915, subjected subsequently to authorized general increases and reductions. There was no joint-line mileage scale within Georgia prior to April 1, 1925, and in the absence of specific through rates lowest combinations applied to joint hauls, observing as a maximum 90 per cent of the local rates. It was stated for the Georgia commission that when it undertook to revise the rates on these commodities it was found that the rates that were actually moving the bulk of the traffic in Georgia were much lower than the class P scale; that these specific rates had been put in by the carriers from time to time, each adjustment being made to take care of some particular need.

At the time of the Georgia commission's order here in question there were many specific interstate rates from shipping points into Georgia which were lower than both the carriers' interstate scales and the prescribed Georgia scales. In view of this situation the Georgia commission's order [fol. 27] establishing its new scales on April 1, 1925, contained a provision as follows:

In no instance shall the rates on the commodities covered by this order be higher between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other

states, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul.

The intrastate rates between points in Georgia where higher than the prescribed Georgia scales were reduced to that basis on April 1, 1925, but due to lack of time for the carriers to complete the revision of the lower interstate rates into Georgia, the Georgia commission postponed the effective date for compliance with the above-quoted provision until August 1, 1925. The carriers subsequently filed with us certain schedules to become effective August 1, 1925, in which it was proposed to increase the interstate rates on these commodities from various shipping points to Georgia destinations to the basis of the Georgia scales. For example, increases were proposed from such points as Montgomery, Birmingham, Chattanooga, and Copperhill. Protests were filed by the Alabama Public Service Commission, and by various sand, gravel, and slag interests located at these and other points. We refused to suspend the proposed rates, with certain exceptions, and finally permitted them all to become effective except those proposed by the Louisville & Nashville on slag from Copperhill to certain points in Georgia which are involved in Investigation and Suspension Docket No. 2470, heard with these proceedings. Most of these increased rates became effective August 1, 1925. This action brought about the filing of these formal complaints by the Montgomery and Chattanooga complainants.

The scales of rates prescribed by the Georgia commission on all the commodities were subject to a minimum of 60,000 pounds. But the rates on crushed stone, washed gravel, and slag were made 10 cents per ton higher than those on unwashed gravel, clay gravel, and sand.

[fol. 28] The table below shows the scales of rates submitted by the Coast Line as being in effect on that line between points in Georgia prior to April 1, 1925, as compared, up to 300 miles, with the single-line scales for class A carriers effective on the above date as a result of the Georgia commission's order. There is also shown the single trunk line scale which the carriers submitted in 1921 to the Georgia and Alabama commissions, less 10 per cent.

This latter scale is the one which they assert is now generally being applied by the trunk lines in the South and is the one which the carriers are now proposing for uniform application throughout the territory here involved, except to points in Florida south of the Seaboard Air Line from Jacksonville to River Junction.

Distance	Prior to Apr. 1, 1925[1]			Proposed[4]	Apr. 1, 1925, prescribed by Georgia commission[5]	Apr. 1, 1925, prescribed by Georgia commission[6]
	Chert, gravel, sand (n. o. s.) slag, stone, crushed or rubble[2]	Stone flagging (stone blocks paving rough)[3]	Clay shale[3]			
	Cents	Cents	Cents	Cents	Cents	Cents
5 miles	53	75	37	45	50	40
10 miles	58	81	42	50	50	40
15 miles	67	89	50	54	50	40
20 miles	69	92	53	59	60	50
25 miles	72	94	58	63	60	50
30 miles	75	97	60	68	60	50
35 miles	78	100	65	72	70	60
40 miles	81	103	68	77	70	60
45 miles	83	106	70	81	70	60
50 miles	83	106	70	86	80	70
55 miles	89	108	73	90	80	70
60 miles	92	114	80	90	80	70
65 miles	94	117	83	95	90	80
70 miles	97	119	85	95	90	80
75 miles	100	122	88	99	90	80
80 miles	103	125	93	99	90	80
85 miles	106	128	95	104	100	90
90 miles	108	131	98	104	100	90
95 miles	114	133	103	108	100	90
[fol. 29]						
100 miles	117	130	108	108	100	90
110 miles	119	142	110	113	100	90
120 miles	122	144	113	117	110	100
130 miles	125	147	115	122	110	100
140 miles	128	150	120	126	120	110
150 miles	131	153	125	131	120	110
160 miles	133	156	128	135	120	110
170 miles	139	158	130	140	130	120
180 miles	142	164	135	140	130	120
190 miles	144	167	138	144	130	120
200 miles	147	169	140	144	140	130
210 miles	150	172	143	149	140	130
220 miles	153	175	148	149	140	130
230 miles	153	175	150	153	150	140
240 miles	156	178	150	153	150	140
250 miles	158	181	153	158	150	140
260 miles	158	181	155	158	150	140
270 miles	164	183	158	162	160	150

Distance	Prior to Apr. 1, 1925[1]				Apr. 1, 1925, prescribed by Georgia commission[5]	Apr. 1, 1925, prescribed by Georgia commission[6]
	Chert, gravel, sand (n. o. s.) slag, stone, crushed or rubble[2]	Stone flagging (stone blocks paving rough)[3]	Clay shale[2]	Proposed[4]		
	Cents	Cents	Cents	Cents	Cents	Cents
280 miles	167	189	160	162	160	150
290 miles	167	189	163	167	160	150
300 miles	169	192	163	167	160	150

[1] Rates prior to April 1, 1925, were published per car (minimum weight as indicated). For comparative purposes rates have been reduced to ton of 2,000 pounds, and fractions of less than 0.5 cent are dropped, fractions of 0.5 cent or over increased to the next unit.

[2] Carload minimum weight 36,000 pounds.

[3] Carload minimum weight 40,000 pounds.

[4] Single-line trunk-line scale submitted by carriers to Georgia and Alabama Commissioners in 1921, less 10 per cent and is scale carriers are now proposing in these proceedings; carload minimum weight marked capacity of car.

[5] Applies on gravel (washed) in bulk, carload minimum weight 60,000 pounds; slag, granulated, lump or pulverized, in package or in bulk, carload minimum weight 60,000 pounds; and stone or granite, viz., crushed flagging, rubble, or stone screenings in bulk, in straight or mixed carloads, minimum weight 60,000 pounds.

[6] Applies on chert, in bulk, carload minimum weight 60,000 pounds; clay, crude, in bulk, carload minimum weight 60,000 pounds; gravel (not washed), or sand and clay gravel, in bulk, carload minimum weight 60,000 pounds; sand (common) straight, or sand and gravel mixed, in bulk, carload minimum weight 60,000 pounds; shale, in bulk, carload minimum weight 60,000 pounds.

[fol. 30] The following table taken from an exhibit is illustrative of increases in actual going rates to Atlanta from representative Georgia points as well as from interstate points, which became effective as a result of the Georgia commission's order, which increased rates are compared with the scale proposed by the carriers in these proceedings:

To Atlanta from—	Carrier	Miles	Rate prior to effective date of Georgia Commission order, 1925	Present rate as result of Georgia Commission order, 1925	Actual increases per ton	Carriers' proposed scale
Sand:						
Juliette, Ga.	Sou. Ry.	64	$0.57	$0.80	$0.23	$0.95
Lowry, Ga.	Sou. Ry.	34	.57	.60	.03	.72
Dames Ferry, Ga.	Sou. Ry.	72	.57	.80	.23	.99
Popes Ferry, Ga.	Sou. Ry.	74	.57	.80	.23	.99
Mussella, Ga.	Sou. Ry.	82	.57	.90	.33	1.04
Asbestos, Ga.	G. & N. W.	83	.90	.90		1.04
Roberta, Ga.	Sou. Ry.	88	.57	.90	.93	1.04
Gaillard, Ga.	Sou. Ry.	94	.57	.90	.33	1.08
Rollo, Ga.	Sou. Ry.	95	.57	.90	.33	1.08
Allon, Ga.	Sou. Ry.	96	.57	.90	33	1.08
Zenith, Ga.	Sou. Ry.	98	.57	.90	.33	1.08
Norris, Ga.	Ga. R. R.	131	1.02	1.10	.08	1.26
Howard, Ga.	C. of Ga.	163	.90	1.20	.30	1.40
Junction City, Ga.	C. of Ga.	166	.90	1.20	.30	1.40
Towns, Ga.	Sou. Ry.	175	.90	1.20	.30	1.40
Lumber City, Ga.	Sou. Ry.	182	.90	1.20	.30	1.44
Albany, Ga.	C. of Ga.	210	.82	1.10	.48	1.49
Chehaw, Ala.	W. Ry. of A.-A. & W. R. R.	135	.59	1.10	.51	1.26

To Atlanta from—	Carrier	Miles	Rate prior to effective date of Georgia Commission order, 1925	Present rate as result of Georgia Commission order, 1925	Actual increases per ton	Carriers' proposed scale
Sand:						
Chattanooga, Tenn.	Various	137	1.02	1.10	.08	1.26
Arrowhead, Ala.	W. Ry. of A.-A. & W. R. R.	161	.63	1.20	.57	1.40
Montgomery, Ala.	W. Ry. of A.-A. & W. R. R.	174	.77	1.20	.43	1.40
Pruitts, Ala.	M. & O.	178	.77	1.20	.43	1.40
Gravel:						
Chehaw, Ala.	W. Ry. of A.	135	1.02	1.20	.18	1.26
Chattanooga, Tenn.	Various	137	1.02	1.20	.18	1.26
Arrowhead, Ala.	W. Ry. of A.	161	1.02	1.30	.28	1.40
Montgomery, Ala.	W. Ry. of A.	174	1.06	1.30	.24	1.40
Crushed stone:						
Stone Mountain, Ga.	Ga. R. R.	15	.57	.50		.54
Stockbridge, Ga.	Sou. Ry.	19	.57	.60	.03	.59
Lithonia, Ga.	Ga. R. R.	24	.68	.60		.63
Holton, Ga.	Sou. Ry.	79	.68	.90	.22	.99
Graysville, Ga.	N., C. & St. L.	120	1.10	1.10		1.17

[fol. 31] The following table taken from an exhibit also compares the rates on sand and washed gravel in effect prior to August 1, 1925, from Montgomery to various points in Georgia located on the Atlanta & West Point Railroad with the present rates between the same points. The present rates in nearly all instances are on the basis of the Georgia scale.

From Montgomery, Ala., to—	Miles	Sand		Washed gravel		Carrier' proposed single-line scale
		Rates prior to Aug. 1, 1925	Present rates	Rates prior to Aug. 1, 1925	Present rates	
West Point, Ga.	88	$0.77	$0.90	$0.84	$0.90	$1.01
Lagrange, Ga.	103	.77	.90	.90	.90	1.13
Hogansville, Ga.	117	.77	1.00	1.06	1.10	1.17
Moreland, Ga.	129	.77	1.00	1.06	1.10	1.22
Newnan, Ga.	135	.77	1.10	1.06	1.20	1.26
McCollin, Ga.	149	.77	1.10	1.06	1.20	1.31
Phillipsdale, Ga.	153	.77	1.10	1.06	1.20	1.35
Union City, Ga.	157	.77	1.10	1.06	1.20	1.35
Red Oak, Ga.	162	.77	1.20	1.06	1.30	1.40

While there are many interstate rates to and from Georgia points based on the carriers' interstate scales which are higher than the present Georgia scales, yet the conclusion is justified from this record that the larger part of this traffic prior to August 1, 1925, moved from interstate points to Georgia at much lower rates than it has since that date and that the same is true respecting the intrastate movements between points in Georgia, prior and subsequent to April 1, 1925. Material increases in numerous important going rates both between points in Georgia and interstate into Georgia were brought about by the Georgia commission's order, and while there are many examples of such increases shown of record the above illustrations are sufficient to portray the situation.

The carriers, however, contend that the Georgia commission's order, in so far as increases were involved, merely [fol. 32] increased certain depressed rates which that commission had theretofore refused to permit the carriers to increase. It is stated, for example, that several unsuccessful attempts had been made to increase the intrastate rates to Atlanta from points on the Southern's Fort Valley branch, and that the refusal of these increases forced the Southern, as well as other lines, to establish low competitive rates from various other points to Atlanta.

The Coast Line, the only trunk line party to the petition which resulted in the order of investigation in No. 17517, assumed the burden of attempting to show that the present rates prescribed by the Georgia commission are too low. It was testified that this traffic both from the standpoint of tonnage and revenue is of great importance to the Coast Line and that, with the exception of the Southern system lines, it handles more of this traffic than any other carrier in the South. In 1924 the Coast Line handled 3,750,195 tons of these commodities, which was equivalent to 18.1 per cent of its total tonnage for that period, and in the first 10 months of 1925 it handled 4,452,519 tons, which produced in revenue $4,074,316. The Coast Line originates a vast tonnage of these commodities in Virginia, the Carolinas, and Florida. The amount which it originates in Georgia is comparatively small. While the Coast Line claims that such Georgia traffic as it originated prior to April 1, 1925, moved to a great extent on the Georgia scales then in effect, yet neither it nor

any other carrier presented any evidence or claim that the Georgia commission scales of April 1, 1925, resulted in reducing the carriers' revenue.

On the other hand, it was shown on behalf of the Georgia commission that the Georgia proportion of gross operating revenues on all traffic of various carriers for the six months ending November 30, 1925, exceeded the proportion for a like period in 1924 by the following percentages: Coast [fol. 33] Line 42.9 per cent, Atlanta, Birmingham & Atlantic 9.5 per cent, Atlanta & West Point 17.1 per cent, Central of Georgia 13.7 per cent, Seaboard Air Line 22.6 per cent, Southern Railway 17.5 per cent, and various other carriers in amounts ranging from 1.7 to 45.8 per cent. A witness for the intervenor Atlanta Freight Bureau, who is of the opinion that the present Georgia rates are too high, offered an exhibit which purports to show that taking the tonnage of slag, gravel, sand, and crushed stone which moved to Fulton County, Ga., and to the city of Atlanta from Georgia and interstate points in 1925 for road-building purposes alone, which is said to represent about one third of the total movement, and applying thereto, respectively, the increased rates resulting from the present Georgia scales and the rates herein proposed by the carriers, the results would be increases in freight charges over those under the prior rates of $114,415 and $163,235, respectively.

Evidence was presented on behalf of the Charleston & Western Carolina to show that the present Georgia scales had the effect of greatly curtailing the movement of clay gravel from points on that line between Yemassee, S. C., and Augusta, Ga., to points in Georgia. It was indicated by an exhibit that such tonnage dropped from 81,601 tons in 1924 to 8,929 tons in 1925, and the testimony of a shipper of clay gravel located on this line at Ellenton, S. C., was to the effect that he is now unable to ship into Georgia. The inference is that this traffic has been lost by South Carolina to Georgia producers. The principal point of production of clay gravel in Georgia is at Norris, on the Georgia Railroad, and about 50 miles west of Augusta. An intervening producer at that point testified that prior to inauguration of the present Georgia rates he had no general line of rates and that before he could bid for a contract he was compelled to take up the question of establishment of rates with the car-

[fol. 34] riers and could not successfully compete at numerous Georgia points with shippers in South Carolina located on the Charleston & Western Carolina. While the present Georgia rates have benefited this producer's position in shipping to Georgia points, he contends that the scale is too high and pointed out that shippers in South Carolina on the line above mentioned now have an advantage of from 3 to 13 cents per ton over him in shipping through Savannah, Ga., to the coastal section.

There was some evidence to the effect that after August 1, 1925, traffic fell off from Montgomery and other Alabama points to destinations in Georgia as a result of the increases in rates resulting from the new Georgia scales. However, the same is shown as to movements between points in Georgia. A witness explained that this situation was due to the fact that consumers, realizing that rates were to be increased both State and interstate to Georgia points as a result of the Georgia commission's order, bought large quantities of these commodities for storage. Statistics of record appear to bear out this statement.

Various comparisons were submitted to show that the present Georgia scales are too low. On the other hand, numerous comparative rates were submitted on behalf of the Georgia commission to show the reasonableness of the Georgia rates. Whatever may be said against the present Georgia scales the evidence justifies the conclusion that they served to raise depressed rates which were moving a large part of the traffic both intrastate and interstate to Georgia destinations to a more consistent basis than had existed.

From the evidence introduced both by the Coast Line and other carriers it would seem that they are more concerned about the possibility of the extended application of the Georgia scales in the South than any result that their application within Georgia has had.

[fol. 35] As has been before stated, the Montgomery district produces more sand and gravel than any other district in the South, and the evidence goes to show that the Roquemore Company is perhaps the largest producer of these commodities in that territory. It was testified that this concern's chief markets for sand are Birmingham and Atlanta, and that outside of these two markets its shipments of sand are confined to hauls ranging from 50 to 75 miles.

Its shipments of gravel move much longer distances. The evidence indicates that to the north, Birmingham is its chief market. It ships gravel extensively to Georgia, Florida, and Carolina points. The president of this company testified that perhaps one-third of its gravel production goes to Florida. In shipping sand to Atlanta it encounters competition with numerous sand producers in Georgia. In shipping gravel to the States above mentioned it encounters competition with crushed stone producers in Georgia and in the Carolinas and with slag from the Birmingham district.

The traffic manager for the Chattanooga complainant stated that about 50 per cent of that firm's production of sand and gravel is consumed in the Chattanooga district, that the maximum length of movement of its sand shipments by rail in any appreciable volume is about 75 miles, and gravel about 150 miles, and that some gravel is shipped to Atlanta. This witness stated that his company is in competition with Montgomery shippers but that it could ship more extensively into Georgia if there existed a more favorable rate relationship with Georgia producers of sand and crushed stone. As a result of the revision of August 1, 1925, as shown by table above, in so far as relationship is concerned in rates to Atlanta, this complainant's differential of 25 cents over Montgomery on sand and 4 cents under on gravel was changed to 10 cents under the latter point on both commodities and the differential of Gaillard, [fol. 36] Ga., a large sand-shipping point, under Chattanooga was reduced from 45 cents to 20 cents.

At the hearing it was stated for the intervening Birmingham slag interests that there are numerous instances where the rates on slag from the Birmingham district to points in the States mentioned are on a specific commodity-rate basis with no corresponding rates on sand and gravel from the Montgomery district, and that with a view to composing past differences these interveners agree that the complainants are entitled to rates on gravel on a parity with those applicable to slag, and they are supporting the complainants' proposals in this case. Reference hereinafter to complainants will therefore include these interveners.

With the exception of the intervening Mississippi interests, all parties agree that the operating and transportation conditions over standard lines throughout the general terri-

tory here involved, with the exception of the Florida peninsula, and the reservation made by the Louisville & Nashville as to its old line between Etowah, Tenn., and Marietta, Ga., are similar.

The carriers advocate a uniform maximum mileage scale applicable to all thee commodities. They advocate the scale which they state is at present generally maintained by the trunk-line carriers in the South. It was stated for the Louisville & Nashville, however, that they never concurred in the mileage scales submitted by the trunk-line carriers in 1917 and 1921, respectively, to the Georgia and Alabama commissions, but in 1921 submitted a single-line scale higher than that proposed by the other carriers, which it is said is the normal distance scale that has been applied over the Louisville & Nashville system for many years, and that this line did not decide to join the other lines in the proposals now made until just prior to the hearing herein.

[fol. 37] With the exception of the Louisville & Nashville and the Coast Line, the other trunk-line carriers desire to reserve the right to depart from any maximum scale that may here be prescribed when in their judgment competitive conditions warrant such departures and such can be made without creating unlawful discriminations. The two carriers above mentioned state that it will be their purpose, in the event of approval of the carriers' proposed scale, to apply such scale literally with the possible exception that it might be desired to apply a group rate from Montgomery to take care of certain near-by producing points in that district. While we shall not prescribe minimum rates, we shall prescribe a scale which takes fully into consideration the very low values of these commodities and all characteristics, transportation and otherwise, which entitle them to relatively low rates. It will be a scale, in our opinion, from which the carriers ought not to depart. Departures could only have the result, ultimately, of forcing an unwarranted reduction in the general rate level on these commodities which would be burdensome to other traffic.

The complainants and the Georgia commission advocate uniform scales, but propose a lower scale for certain of these commodities than for others. The Georgia commission advocates its present scales as reasonable for application throughout the territory here considered. Certain

intervening sand interests located at Rollo and Gaillard and crushed-stone interests located in Georgia and South Carolina favor a uniform scale on all of these commodities. The scale submitted on behalf of these interveners will hereafter be referred to as the "Brooker scale." The intervener, Atlanta Freight Bureau, also submitted a scale to apply uniformly on all of the commodities.

The Mississippi interests oppose the prescription of a general distance scale and especially oppose such a scale [fol. 38] in so far as Mississippi destinations are concerned. They assert that the cost of carrier operation in the Mississippi Valley is much less than in southern territory generally. They also show that there are numerous sand and gravel pits in the northern and eastern parts of Mississippi which they say supply practically all the needs of that State, and that there are no shipments of these commodities into Mississippi from Montgomery and Chattanooga. They assert that such shipments, if made, would necessarily pass through Mississippi territory where these commodities are produced. They prefer to leave the Mississippi situation as it is.

The following table shows the single-line scales submitted by the respective parties for trunk-line application:

	Cents	Cents	Cents	Cents	Cents
	Complainants' scale, description No. 1[1]	Present Georgia scale[1]	Scale proposed by Atlanta Freight Bureau	Carriers' proposed scale	Brooker proposed scale
	Cents	Cents	Cents	Cents	Cents
5 miles	45	50	40	45	45
10 miles	50	50	40	50	45
15 miles	55	50	50	54	50
20 miles	60	60	50	59	50
25 miles	65	60	50	63	55
30 miles	70	60	60	68	55
35 miles	70	70	60	72	60
40 miles	75	70	60	77	60
45 miles	75	70	70	81	65
50 miles	80	80	70	86	65
55 miles	80	80	70	90	70
60 miles	85	80	70	90	70
65 miles	85	90	80	95	75
70 miles	85	90	80	95	75
75 miles	90	90	80	99	80
80 miles	90	90	80	99	80

	Complainants' scale, description No. 1[1]	Present Georgia scale[1]	Scale proposed by Atlanta Freight Bureau	Carriers' proposed scale	Brooker proposed scale
85 miles	90	100	90	104	85
90 miles	95	100	90	104	85
95 miles	95	100	90	108	90
100 miles	95	100	90	108	90
110 miles	100	100	100	113	95
120 miles	100	110	100	117	100
130 miles	105	110	100	122	105
140 miles	105	120	110	126	110
[fol. 39]					
150 miles	110	120	110	131	115
160 miles	110	120	110	135	120
170 miles	115	130	120	140	125
180 miles	115	130	120	140	130
190 miles	120	130	120	144	135
200 miles	120	140	130	144	140
210 miles	125	140	130	149	145
220 miles	125	140	130	149	150
240 miles	130	150	140	153	160
260 miles	135	150	140	158	170
280 miles	140	160	150	162	180
300 miles	145	160	150	167	190
320 miles	150	160	160	171	200
340 miles	155	170	160	176	210
360 miles	160	170	170	180	220
380 miles	165	170	170	185	230
400 miles	170	180	180	189	240
420 miles	175	180	180	194	250
440 miles	180	180	190	198	260
460 miles	185	190	190	203	...
480 miles	190	...	200	...	...
500 miles	195	...	200	...	...

[1]Description No. 1, for application on chert in bulk, gravel (washed), in bulk, sand and washed gravel, in bulk, in mixed carloads, slag, crushed, granulated, or lump, in packages or in bulk, stone, broken, crushed, rubble and ballast, in bulk.

Description No. 2 includes gravel (not washed) in bulk, gravel, clay (i. e., clay gravel), in bulk, sand, in bulk, in straight carloads.

Rates proposed on commodities enumerated under description No. 2 are 10 cents per net ton less than the rates above shown as proposed on commodities enumerated under description No. 1. The commodities enumerated above under descriptions 1 and 2 correspond, with minor exceptions, to the two descriptions as now made under the present Georgia scales and the present Georgia scale shown above is likewise 10 cents per net ton higher than the present Georgia scale applicable to the other commodities.

The complainants' full scale as proposed runs to 1,020 miles. It increases 5 cents for each 20-mile block beyond 500 miles until it reached 720 miles, beyond which it increases 5 cents for each 30-mile block, the rate proposed on description 1 commodities for 1,020 miles being $3.

The evidence in these proceedings indicates that these commodities, especially washed gravel, crushed stone and [fol. 40] slag, move throughout southern territory much longer distances than they do in central and other territories.

The record affords no basis for determining the proportion of this traffic that moves in the territory considered over two or more lines. The indication is, however, that the joint-line movement is substantial. The carriers and most of the shipping interests agree that in the transportation of these low-grade commodities some recognition should be given to joint-line service by the prescription of differentials over the scale for single-line hauls. The intervener Atlanta Freight Bureau, however, is opposed to joint-line differentials on this traffic, and upon argument the Georgia commission also expressed similar opposition.

The differentials that were proposed at the hearing are as follows:

By complainants:

70 miles and under	15 cents
120 miles and over 70	10 cents
160 miles and over 120	5 cents

Present Georgia scales:

10 miles and not over 110	10 cents

By carriers:

10 miles and not over 360	28 to 13 cents
Over 360 miles	9 cents

The complainants state that they present their scales on the theory that, if adopted, they will move the traffic, be literally applied, and result in a harmonious rate level in lieu of what they describe as the "existing hodgepodge of competitive rates," whereas they contend that the carriers' scale is presented on the theory that it will fix merely the highest maximum limit, it being based on the highest scale applied by the carriers in the South, namely, that applicable to crushed stone in the Carolina territory. They assert that the carriers' scale is not proposed with the thought of its universal application but with the expecta-

tion that competitive point-to-point rates will be established wherever occasion seems to demand. Complainants commend the Georgia commission for taking the [fol. 41] initial step to get rid of what they term a discriminatory rate structure. They assert that the rates under the present Georgia scales are actually moving the traffic. Their objection to the Georgia scales is chiefly to the gradation. It is their contention that these scales progress not rapidly enough for the short hauls and too rapidly for the longer hauls. The result, they say, is a distinct advantage to Georgia producers, in that as their hauls are comparatively short, but a severe handicap to complainants in shipping to Georgia points in competition with Georgia producers. Complainants assert that their submitted scales, designed as they are with the thought of actual application, will go far to doing away with the establishment of low competitive rates, inasmuch as they give regard to competitive forces, so far as it is practicable, by being constructed with small breaks and a low curvature of progression. Complainants compare the carriers' scales on washed gravel and sand, which they say are applied from Montgomery to south Georgia territory, with the Georgia scales on washed gravel, crushed stone, and sand and show that for distances between 100 and 400 miles the rates from Montgomery on washed gravel range from 2 to 15 cents higher than the rates on washed gravel and crushed stone for the same distances between points in Georgia, and that as to sand they range from 12 to 25 cents higher. They also exhibit 41 Georgia destinations to which the distances from Montgomery range from 95 to 366 miles and show that the present rates on gravel from Montgomery to such points are higher than the rates on gravel and crushed stone for the same distances between points in Georgia under the Georgia scale by amounts ranging from 3 to 28 cents. They show that the differences as to sand rates to such points are greater because the carriers apply on interstate traffic to such points the same rates on all these commodities while the Georgia rates [fol. 42] are lower on sand. An exhibit of similar nature was introduced on behalf of the Chattanooga complainant. However, as has been previously pointed out, the rates from Montgomery and Chattanooga to Atlanta, which is by far the greatest consuming market in Georgia, as well as the

rates to various other points in Georgia, are now on the basis of the Georgia scales.

Complainants also show that rates on gravel from Montgomery to typical points in Mississippi, such as Meridian, Vicksburg, Jackson, Tupelo, and Gulfport, are higher than the contemporaneous rates on slag from Birmingham and group points to same destinations by amounts ranging from 18 to 72 cents. The distances to the first three points mentioned are approximately the same from both Montgomery and Birmingham. Montgomery is 58 miles nearer to Gulfport than is Birmingham, but the former pays a 20-cent higher rate on gravel than does Birmingham on slag in shipping to Gulfport.

Complainants assert that they arrived at their proposed single-line scale for application on washed gravel, crushed stone, and slag by taking the scale proposed by the trunk-line carriers on sand and gravel in 1917 to the Georgia and Alabama commissions, applying to the same the subsequent general increases and reductions, eliminating odd cents, and regrading to remove irregularities. This, they say, is the same scale that was approved in Meridian Traffic Bureau v. S. Ry. Co., 60 I. C. C. 5, for application on sand and gravel between Meridian, Miss., and certain points in Alabama. They show that the scale now proposed by the carriers ranges for distances between 35 and 400 miles from 3 to 29 cents higher than the scale proposed by them to the Georgia and Alabama commissions in 1917, after being subjected to subsequent general increases and reductions.

Complainants compare their proposed scales with numerous rates maintained by the carriers. The following [fol. 43] are illustrative: They show that on crushed stone their proposed scale for distances ranging from 152 to 206 miles is materially higher than the rates maintained by the Mobile & Ohio from Columbia Quarry and Krause, Ill., to various points located in Mississippi, Tennessee, Alabama, and Kentucky within the range of distances mentioned; that this line maintains a specific commodity rate of 95 cents on sand and gravel from Memphis to various points in Tennessee and Mississippi for distances ranging from 98 to 186 miles, as compared with complainants' proposed scale on gravel ranging from $1.05 to $1.20, and on sand from 95 cents to $1.10 for similar distances; that to numerous points

in Mississippi located between 100 and 140 miles from Memphis, Tenn., the Frisco maintains rates on gravel which are materially lower than complainants' proposed scale for the same distances and that the sand rates are about on a parity; that to numerous points in Tennessee, Mississippi, and Alabama for distances ranging from 5 to 158 miles the Southern Railway maintains rates on gravel which are somewhat higher than the complainants' proposed rates, but that to points in Alabama located between 158 and 271 miles from Memphis the Southern's rates are lower than complainants' proposed rates for those distances.

The Mississippi interests criticize the showing as to rates from Memphis to Mississippi points in that they assert there is little movement under such rates because the points of destination shown draw their chief supply of sand and gravel from near-by Mississippi points of production.

Complainants also show that specific rates are maintained by the Cincinnati, New Orleans & Texas Pacific on sand and gravel from Chattanooga to points in Tennessee between Hixon and Oneida for distances ranging from 9 to 129 miles which are not materially higher as a whole than the rates on gravel which complainants propose. They also show, [fol. 44] among others, rates on sand from La Grange, Tenn., of 79 cents to Huntsville and 90 cents to Decatur and Birmingham, Ala., for distances of 168, 143, and 236 miles, respectively, as compared with rates on sand from Chattanooga to the same points of $1.08, $1.60, and $1.31, respectively, for distances of 98, 122, and 143 miles. Under complainants' proposed scale the rates from La Grange to the points named would be $1.05, $1, and $120, and from Chattanooga 85 cents, 95 cents, and $1.

Various exhibits were submitted by complainants which show that if their proposed scales were here adopted and were subsequently approved by the Alabama commission, the result would be to increase materially the present rates from Alabama shipping points to numerous points throughout that State.

Sand is produced at Junction City, Ga., and at several other points in that vicinity located, respectively, on the Atlanta, Birmingham & Atlantic and the Central of Georgia. Junction City is located on both lines, being 223 miles from Birmingham over the former, and 193 miles over the latter.

These distances approximate the average distances from all these points to Birmingham as applied over the respective lines on which they are located. For some years past each of these lines has maintained a group rate of 79 cents from these points to Birmingham, which is the same as the rate maintained on sand from the Montgomery district to Birmingham, 97 miles, the short-line distance over the Louisville & Nashville. This 79-cent rate from the Junction City district is assailed in No. 17689 as being unreasonably low. Under complainants' proposed scale on sand the rate from Junction City to Birmingham over the Atlanta, Birmingham & Atlantic would be $1.20, over the Central of Georgia $1.10, and from Montgomery to Birmingham 85 cents.

[fol. 45] Intervening sand producers located at Junction City, Howard, and Morning Star, Ga., three of the points taking the 79-cent rate to Birmingham, stressed the importance to them of the continued maintenance of a rate parity with Montgomery in shipping sand to Birmingham. One of these interveners stated that from 90 to 95 per cent of his sand production is shipped to Birmingham, and another that one-third of his production goes to that point. They say that they have made investments at their plants on the theory of the continued maintenance of a rate parity with Montgomery and that the discontinuance of such a parity will result in great loss to them.

The Atlanta, Birmingham & Atlantic and the Central of Georgia, while concurring in the carriers' proposed scales, yet join with the shippers in urging the continuance of a parity of rates as between the Junction City district and Montgomery to Birmingham. They admit that the 79-cent rate is comparatively low but assert that it affords some profit in view of the circumstances under which the traffic is handled. They assert that this traffic moves from the Junction City district to Birmingham in open-top equipment that would otherwise return empty. The Atlanta, Birmingham & Atlantic shows that it has a preponderance of empty movement to Birmingham as a result of the eastbound loaded movement from that point of various commodities such as coal and iron and steel articles. That line shows that this 79-cent rate yields car-mile revenue from Junction City of 18.7 cents based on a loading of 50 tons, which is compared with its average car-mile revenue for

1924 of 20.76 cents. It shows that its traffic density is much lower than that of other trunk lines serving the South, and its need of traffic. It points out that the yearly tonnage of this sand moving over its line from the Junction City district to Birmingham produces an annual revenue, based on [fol. 46] the 79-cent rate, of approximately $39,500, which revenue it asserts would be lost if the rate parity with Montgomery were destroyed.

The complainants, however, point to the situation above outlined as a striking example of the publication of low competitive rates by carriers to enable their shippers to overcome disadvantages in distance in reaching markets of large consumption, and this emphasizes, they say, the need for the establishment of a scale such as complainants advocate, which they contend, if actually applied, will accord every shipper every right which he can lawfully claim.

As has been heretofore pointed out, the establishment of numerous low competitive rates by the carriers on these commodities has had the effect of breaking down to a considerable extent their interstate distance scales. The situation above discussed as to the Junction City district well portrays the general situation which has resulted in dissatisfaction and apparently had much to do with the filing of these complaints.

The trunk-line carriers submitted numerous exhibits in support of the reasonableness of their proposed single-line scale and to show that the scales proposed by complainants as well as the present Georgia scales are too low. They attempt to show that the rates from Montgomery and Chattanooga, generally speaking, are on the basis of the carriers' proposed scale, which scale, they also undertake to show by numerous exhibits, is also in effect generally throughout southern territory. These exhibits also purport to show numerous instances where rates are maintained on a higher basis than the scale. They also compare their proposed scale with numerous interstate scales maintained on these various commodities in Alabama, Tennessee, Kentucky, Virginia, North Carolina, and South Carolina. Some of these scales are shown as being higher than their proposed [fol. 47] scale and others higher in part and lower in part. They also compare their proposed scale with the averages of the present interstate scales and intrastate scales main-

tained on these commodities by the principal southern carriers, which comparison shows that their proposed scale is lower in numerous instances than the respective averages of the scales referred to. The Louisville & Nashville's present normal scale, as has been stated, is higher than the carriers' proposed scale, and this line shows by numerous comparisons the substantial concession in rates it makes in now concurring in the other trunk-line carriers' proposal. The Coast Line also introduced an exhibit which purports to show that, exclusive of the Pocahontas region and Georgia intrastate movements, 321,826 tons of sand, gravel and crushed stone moved from points on that line during the months of March, June, and September of 1924 and 1925, which tonnage produced a revenue of $351,207, and that if the rates as now proposed by the carriers were applied to that tonnage the result would be to increase the above amount by $3,414, and that if the Georgia rates were applied the result would be a reduction of $51,047.

Evidence was offered purporting to show that the carriers' proposed scale is lower than rates applying between numerous points in central territory, and comparisons are made with numerous rates and scales prescribed or found not unreasonable by us between various points in southern, central, trunk-line and southwestern territories. They refer to the fact that in Sand and Gravel to the Southeast, 83 I. C. C. 436, we approved rates on sand and gravel from stations on the Charleston & Western Carolina to points in the Southeast, which rates are on the same basis as those here proposed.

The following table, compiled from exhibits submitted by the carriers, compares single and joint line scales pro-
[fol. 48] posed by them with the scales prescribed on sand, gravel, crushed stone, and slag in Memphis Southwestern Investigation, 77 I. C. C. 473, and which the carriers say apply generally throughout the Southwest, and with the scales prescribed in Penn. Sand & Gravel Prod. Asso. v. B. & O. R. R. Co., 104 I. C. C. 717, for application between points in western Pennsylvania and points in Ohio, West Virginia, and New York.

Distance	Carriers' proposed scales		Memphis Southwestern scales		Scales prescribed in 104 I. C. C. 717	
	Single line Cents	Joint line Cents	Single line Cents	Joint line Cents	Single line Cents	Joint line Cents
5 miles	45	...	60	70	60	80
10 miles	50	77	60	70	60	80
15 miles	54	81	60	70	60	80
20 miles	59	86	60	70	60	80
25 miles	63	90	70	80	70	90
30 miles	68	95	70	80	70	90
35 miles	72	99	70	80	70	90
40 miles	77	104	70	80	70	90
45 miles	81	108	80	100	80	100
50 miles	86	113	80	100	80	100
55 miles	90	117	80	100	80	100
60 miles	90	117	80	100	80	100
65 miles	95	117	100	110	90	110
70 miles	95	117	100	110	90	110
75 miles	99	122	100	110	90	110
80 miles	99	122	100	110	90	110
85 miles	104	126	110	130	100	120
90 miles	104	126	110	130	100	120
95 miles	108	131	110	130	100	120
100 miles	108	131	110	130	100	120
110 miles	113	135	110	140	110	130
120 miles	117	140	130	140	110	130
130 miles	122	144	130	140	120	140
140 miles	126	149	140	140	120	140
150 miles	131	153	140	140	120	140
160 miles	135	158	140	160	130	150
170 miles	140	158	140	160	140	160
180 miles	140	158	160	170	140	160
190 miles	144	162	160	170	140	160
200 miles	144	162	160	170	...	...
210 miles	149	167	160	180	...	...
220 miles	149	167	160	180	...	...
240 miles	153	176	170	200	...	...
260 miles	158	176	180	200	...	...
[fol. 49]						
280 miles	162	176	200	210	...	...
300 miles	167	180	200	210	...	...
320 miles	171	185	210	220	...	...
340 miles	176	189	210	220	...	...
360 miles	180	194	230	240	...	...
380 miles	185	194	230	240	...	...
400 miles	189	198	230	240	...	...
420 miles	194	203	240	250	...	...
440 miles	198	207	240	250	...	...
460 miles	203	212	270	270	...	...
480 miles	...	...	270	270	...	...
500 miles	...	...	270	270	...	...
520 miles	...	...	290	290	...	...
540 miles	...	...	290	290	...	...
560 miles	...	...	310	310	...	...
580 miles	...	...	310	310	...	...
600 miles	...	...	310	310	...	...

Respecting the scale prescribed in the Meridian Traffic Bureau case, supra, the carriers say that it moves prac-

tically no traffic and, although it has been in effect for several years, its application has never been extended beyond the territory for which it was originally prescribed.

They show that at 220 miles their proposed single-line scale earns 6.8 mills per ton-mile and at 460 miles 4.2 mills, and that under their proposed joint-line scale the earnings would be 7.6 and 4.6 mills, respectively. Beyond 110 miles the Georgia commission's single and joint line scales are the same, and the earnings per ton-mile for the distances shown are, on description No. 1 commodities, 6.4 and 4.1 mills, and on description No. 2 commodities, 6 and 3.9 mills, respectively. It was stated for the Coast Line that any traffic that pays less than 7 mills per ton-mile, especially for distances as short as 200 miles, is not considered very desirable. However, the car-mile earnings under the car-
[fol. 50] riers' proposed rates above referred to for 220 and 460 miles, computed on the basis of 50 tons per car, are 33.8 and 22 cents, respectively.

The carriers support the reasonableness of their joint-line differentials with numerous comparisons, including, in addition to the citation of cases above shown, other cases wherein we have fixed joint-line differentials.

The Georgia commission submitted numerous comparisons between its scales and the rates maintained between numerous interstate as well as intrastate points in the Southeast. These comparisons show that there are numerous rates, both interstate and intrastate, maintained throughout the Southeast which are on a lower basis than the Georgia scales. The intrastate scales in North Carolina and South Carolina are, generally speaking, higher than the Georgia scales.

As heretofore stated, the scale referred to as the "Brooker scale" is submitted on behalf of certain intervening sand interests located at Rollo and Gaillard and crushed-stone interests located in Georgia and South Carolina.

Rollo and Gaillard are important sand-producing points. They are approximately 95 miles from Atlanta, their chief market. The short-line distance from Montgomery to Atlanta is 175 miles over the Western Railway of Alabama and the Atlanta & West Point. It is pointed out on behalf of these intervening sand producers that on August 26, 1920, they had a differential of $1.12 under Montgomery on

sand to Atlanta, that by subsequent successive reductions in the Montgomery rate this differential was lessened, becoming on April 21, 1921, 62 cents; on September 8, 1921, 37 cents; on July 1, 1922, 33 cents; and that from July 18, 1922, to August 1, 1925, the differential was only 20 cents, the rates being 77 cents from Montgomery and 57 cents [fol. 51] from Gaillard and Rollo. Evidence was introduced to show increased movement from Alabama during the period this 20-cent differential was in effect. As has been shown, on the date last mentioned and as a result of the Georgia commission's order the rates on sand became $1.20 from Montgomery and 90 cents from Rollo and Gaillard. These interveners point out that the present rate from Montgomery to Atlanta is the same as was in effect on June 24, 1918, whereas the rate from Rollo and Gaillard has been increased 60 cents. They criticize the other scales here proposed, their contention being that they provide rates which are too high for the shorter hauls and too low for the longer hauls. They strenuously oppose the scales submitted by complainants and point out that on sand to Atlanta complainants' proposal would reduce the differential of Montgomery over Rollo and Gaillard to 20 cents.

They refer to the fact that sand is produced as a by-product only in the Montgomery district and to the evidence produced which shows that complainant located there is underselling other sand producers. They say that complainants' scale is offered for the purpose of enabling the Montgomery complainant to reach distant and large consuming markets and to undersell producers located much nearer to such markets who are unable to meet by-product prices. Such a scale, they assert, if adopted, would seriously handicap these interveners in markets to which they now have the natural advantage in distance.

The evidence submitted on behalf of the intervening crushed-stone interests is of similar import to that submitted for the intervening sand producers. Those located near Atlanta say that notwithstanding their advantage in freight rates to Atlanta as compared with rates on gravel from Montgomery and Chattanooga and on slag from Birmingham, yet, due to higher cost of production of crushed stone, these interveners are unable to do any substantial [fol. 52] business in the Atlanta market in competition with gravel and slag for highway construction from the

points above mentioned. As an example of this competition, they state that the highway from Stone Mountain to Scottdale, Ga., was built with Birmingham slag, notwithstanding that crushed-stone plants are located within a few miles of this highway. They say that because of the smaller sizes of crushed stone required in building construction they make no attempt to compete for this business in the Atlanta market with gravel and slag produced at the points referred to.

The South Carolina crushed-stone interests likewise complain of their difficulty in doing business in near-by territory in competition with Montgomery and Chattanooga gravel and Birmingham slag. They refer to the loss of contracts and state that Florida was once their best market for crushed stone but that they are now shipping very little to that State due to their inability to meet the competition of gravel and slag from the points mentioned. These crushed-stone interests contend that the complainants' proposal with its comparatively low long-haul rates would, if adopted, prevent crushed stone from competing in territory as much as 50 miles from their plants.

On behalf of these interveners various decisions are cited wherein we have held to the effect that it is not within our power to equalize economic conditions or to place one market in a position to compete on equal terms with another market as against natural advantages. They contend that the proceedings should be dismissed but state that, in the event a scale is prescribed, the "Brooker scale" represents their proposal. This scale is constructed on the theory of first determining a terminal charge for the service performed by the carriers or carrier at point of origin and point of destination. A terminal charge of 40 [fol. 53] cents is used in constructing this scale. There is then added to such terminal charge an amount for road-haul service which will produce for the latter service for all distances 5 mills per ton-mile. The full scale starts at 45 cents for the first 5 miles.

It will be noted that this scale is lower than the carriers' proposed single-line scale up to 210 miles, beyond which distance the Brooker scale is the higher, and when it reaches 440 miles it is 62 cents higher than the carriers' proposed scale. Up to 110 miles it is lower than the com-

plainants' proposed washed gravel and slag scale, but at 140 miles it exceeds the same by 5 cents, and at 440 miles by 80 cents. The Brooker scale is lower than the Georgia washed-gravel, slag, and crushed-stone scale up to 150 miles. At 210 miles it is 5 cents, and at 440 miles 80 cents, higher. In other words, the Brooker scale for the longer distances far exceeds any other scale here considered.

In support of this scale it is pointed out that General Order No. 28 increased the rates on these commodities 20 cents per ton instead of 25 per cent, which had the effect of increasing the short-haul rates in greater proportion than the rates for the longer hauls. This, it is contended, brought about rates which are too low for the longer hauls. It is next contended that these commodities are given but little through service, that they usually move in local trains, and that at each division point an additional terminal service is performed with frequent interchange between different carriers. It is argued that it makes no difference, therefore, whether the road-haul is 5 miles or 500 miles, that the actual cost per mile of handling this traffic is the same, and that this cost added to the terminal charge should determine the rate.

The Atlanta Freight Bureau criticizes the various scales here submitted both as to their level and progression. It is shown that as a result of the present Georgia scales the carriers have received a substantial increase in their revenue on both interstate and intrastate shipments to the [fol. 54] Atlanta district. This intervener proposes its scale on the theory that it presents a better level and a more logical progression than the other submitted scales. This scale is, it states, the one that the consumers of these commodities favor.

The interveners, Colbert Limerock Asphalt Company and Alabama Rock Asphalt Company, are producers of asphaltum limestone at Colrock and Margerum, Ala., respectively. They ask that whatever scale of rates is prescribed in these proceedings the same scale be made applicable to their commodity. This commodity has an asphaltum and a bitumen content and is shipped in its crude state and subjected to a further manufacturing process at destination before it can be used as a paving material for highways and streets. The testimony shows that it sells at from $2.50 to $3.50 per ton at point of origin. Rating and rates on this commodity

from the point above mentioned to points in southern and central territories and to points in various States located west of the Mississippi River are involved in No. 17805, now pending, and this commodity will not be further considered in these proceedings.

The present method of making rates on these commodities to and from the Florida peninsula is by combination of factors to and from Jacksonville. Except on slag, these rates were originally combinations of local rates, but they are now subject to the so-called Kelly combination rule, so that the through rates are 30 cents less than the combination of locals on Jacksonville. Through rates on slag are made by deducting 12 cents from each of the factors. The carriers desire to continue the Jacksonville combination basis. They cite present rates on sand and gravel from Montgomery to representative Florida destinations ranging from $2.69 to Gainesville, 400 miles, to $4.32 to Miami, 735 miles. The earnings per ton-mile under these rates range from 6.7 to 5.6 mills, and the carriers offer this as [fol. 55] proof that the rates are now on a low basis and that no reductions are justified. However, they themselves propose in other parts of southern territory a single-line rate of $1.89 and a joint-line rate of $1.98 for 400 miles, and no sufficient reason has been shown why the rate between Montgomery and Gainesville for the same distance should be 40.2 per cent higher than the single-line rate and 33.8 per cent higher than even the joint-line rate, a large part of the haul being through territory in which the standard scale would apply.

In Southern Class Rate Investigation, 100 I. C. C. 513, 624, we said:

> The present method of making rates on the Jacksonville combination to and from the Florida peninsula is merely an arbitrary device for enhancing revenue. Ordinarily there is no change of carriers at Jacksonville and much of the traffic does not even pass through that point.

The subsequent construction of new railroad lines has made these remarks even more appropriate than they were then. In that proceeding we prescribed certain arbitraries to be added to the basic scale for that part of the haul within

the peninsula south of the Seaboard Air Line from Jacksonville to River Junction; and that is the method of constructing rates to and from the peninsula which complainants favor here. In the original report in that investigation we made the arbitraries 10 per cent of the basic scale, but in a subsequent report, 109 I. C. C. 300, we increased them to 15 per cent. In the latter report we also said, at page 308:

In the case of this Florida traffic the carriers also stress the revenue loss which they fear may result from the subsequent application to commodity rates of the principles followed in prescribing class rates. We are not here dealing with commodity rates. For the present it is sufficient to say that if and when we are called upon to fix maximum reasonable commodity rates we shall take into consideration all pertinent factors, including the revenues of the carriers.

In changing from a system of rate making which has prevailed for many years to a new method, it is reasonable that consideration should be given, particularly in the case [fol. 56] of commodities moving in volume at relatively low rates, to the effect which an abrupt and radical change in rate level might have upon carrier revenues; and there is the more reason for such consideration in this instance in view of the heavy burden which the carriers have recently assumed in the form of new railroad construction to meet Florida needs.

The record here, however, in so far as it pertains to rates into Florida, is very meager. At the hearing no producers in Florida of any of these commodities were represented, and the evidence tended to show that, with the exception of sand, they are not produced in Florida to any appreciable extent. At the argument, however, counsel for the carriers stated that it had since been learned that all of these commodities, with the exception of slag, are produced in Florida in substantial quantities and that they are shipped throughout the State in competition with shipments from points without the State.

While, therefore, we are satisfied that the through rates to points in the Florida peninsula ought not to be made upon the Jacksonville combinations, we shall not, in view of the state of the record, at this time undertake to make any specific finding or order with respect to these rates. Upon

petition the proceedings, so far as they relate to such rates, may be reopened in order that an adequate and satisfactory record dealing with this particular situation may be made. Or new complaints, possibly covering these issues in a more comprehensive way, may be presented.

The carriers have insisted throughout these proceedings that the traffic here considered moves throughout southern territory largely under rates that are on the level of their proposed scale. What proportion of this traffic is moving in the South on the carriers' interstate scales as compared with that moving on much lower competitive rates cannot be accurately determined from this record. It does show, [fol. 57] however, that the carriers have established numerous rates between many of the most important producing points and consuming markets which are much lower than their general distance scales. It can hardly be disputed that these competitive rates have moved and are moving a large volume of traffic, that the prevailing distance scales are not representative of the general rate level, and that this is a situation which had much to do with the bringing of the complaints now before us.

Proposals of the Short Lines

The American Short Line Railroad Association presented a list of so-called short lines for which a special basis of rates is here sought because of their limited traffic and financial condition. They are shown in Appendix B. The Atlanta, Birmingham & Atlantic, which in other cases has been classed as a weak line, was represented but made no request for special treatment. No objection was made to according short lines special treatment. However, our findings upon this matter hereinafter made will relate only to those short-line carriers parties to these proceedings in whose behalf special treatment was specifically sought.

A scale of single-line rates proposed on behalf of the short lines represented ranges from 11 cents for 5 miles to 33 cents for 300 miles higher than the carriers' proposed standard single-line scale. Their proposed joint-line scale is also higher by approximately the same amounts than the proposed joint-line scale.

Division of Commodities as to Rates

It has been shown that the complainants are proposing a basis of rates on washed gravel, crushed stone, and slag, which is 10 cents per net ton higher than that proposed [fol. 58] on sand, clay gravel, and unwashed gravel. This division is in accord with that which prevails under the present Georgia scales. Complainants do not contend that there is any difference in transportation conditions or characteristics as they apply to the movement of these respective commodities. They base their contention for a lower basis of rates on sand, clay gravel, and unwashed gravel chiefly on the fact that they have a somewhat lower range of values than do the other commodities and upon the inability of sand and clay gravel to move long distances because of the competition prevailing between the numerous points producing these commodities. They also say that sand does not complete with the other commodities. The carriers and various intervening crushed-stone interests as well as certain Georgia sand producers oppose this request of complainants and favor one basis of rates for all the commodities. An intervening sand producer with plants at Rollo and Gaillard testified that—

> Irrespective of the fact that I produce sand only, I do not feel that I can consistently ask this commission to prescribe lower rates on sand than on the other road-making materials.

As has been previously stated, the evidence in these proceedings shows that on the whole there is actual and active competition between all the various commodities.

In the fixing of rates on these commodities in the past we have not recognized the existence of a difference in the transportation characteristics, or in any other factors entitled to consideration in the fixing of rates, such as to warrant a different basis of rates on some as distinguished from others. Where scales have been prescribed in any territory they have been rated the same. See Sand and Gravel to the Southeast, supra, and Penn. Sand & Gravel Producers Asso. v. B. & O. R. R. Co., supra. The evidence presented in these proceedings is not sufficient to warrant a departure from this practice.

[fol. 59] Minimum Weight

All parties to these proceedings agree that a uniform minimum weight should be prescribed on these commodities for application throughout the territory here considered and, with the exceptions noted below, all agree that it should be 90 per cent of the marked capacity of the car, except that where the car is loaded to full visible capacity actual weight should govern. The Georgia commission favors the fixing of the minimum at a definite amount. Certain other interveners located in Georgia take the position that if 90 per cent of the marked capacity of the car is fixed it should be with reference to the marked capacity of the car ordered by the shipper.

General Conclusions

As has been indicated, there is quite general agreement of both shippers and carriers that operating and other transportation conditions on standard lines throughout the territory here involved, with exception of the Florida peninsula, are sufficiently similar to warrant a uniform rate level on these commodities. This was the conclusion that we reached with respect to all of southern territory, other than the Florida peninsula, in Southern Class Rate Investigation, supra, and also in Brick and Clay Products in the South, 88 I. C. C. 543, and Fertilizers between Southern Points, 113 I. C. C. 389. In those proceedings no distinction was sought in rates as between branch lines and main lines, and none is sought here. We are of the opinion that there should be a uniform rate level upon the commodities in issue over standard lines within the territory involved, excepting the Florida peninsula. The special contention of the Louisville & Nashville that higher rates are justified upon its lines between Etowah and Marietta is hereinafter considered.

For the reasons indicated in the cases above cited, which are supported by the record here, we are also of the opinion [fol. 60] that the short lines listed in Appendix B are entitled to special rate treatment, and that this may be afforded by adding, in all instances where the haul is in whole or in part over such a short line, 25 cents to the rate determined by the scale herein prescribed for standard lines.

In this connection the following statement from Southern Class Rate Investigation, supra, at page 655, is pertinent:

> While the matter of divisions of joint rates is not under consideration in this proceeding, we deem it not inappropriate to express the view that where joint rates between standard lines and weak or short lines are made by the use of arbitraries in the manner above indicated, it is a fair presumption that the division of the standard line should not be greater than it would receive if it were dividing the same rate minus the arbitrary with another standard line, and that the benefit of the arbitrary should accrue wholly to the weak or short line.

In the case just cited we reached the conclusion that no sufficient reason had been shown for joint-line arbitraries, but that the single scale to be prescribed should be made somewhat higher than if its application were to be confined to single-line routes. A similar conclusion was reached in Fertilizer between Southern Points, supra. As was there pointed out, a single scale without joint-line arbitraries has great practical advantages, particularly in simplicity of tariff construction, and can be justified upon other grounds as well. In the case of the commodities under consideration, however, there is perhaps more basis for point-line arbitraries than in the case of any other form of traffic. The very low value of these commodities makes the cost of transportation a most vital matter, and it may well be that even the slight increase in rate level over the single-line routes which the elimination of joint-line arbitraries would entail ought to be avoided. Undoubtedly the greater proportion of this traffic moves over such routes. At all events we have reached the conclusion that in the case of these commodities joint-line arbitraries may reasonably be permitted, but should be of lesser amounts and disappear at an earlier stage of the scale than the carriers propose. [fol. 61] But this should not be construed as an indication that we favor joint-line arbitraries in the case of traffic of higher grade.

Turning to the level of the scale, all of the rates which have been proposed in these proceedings, whether by shippers or by carriers, are relatively low as compared with the going rates on most other forms of traffic. The com-

modities, as we have seen, are of unusually low value. It is doubtful indeed whether any traffic moves which is worth less at the point of production than clay, gravel, or sand. In the price to the consumer the cost of transportation is a heavy factor. Moreover, these commodities load very heavily, move in cars of relatively low tare weight as compared with the load, are not susceptible to damage, and normally move in considerable volume without unusual switching operations at either end of the haul and without anything in the nature of special service. No cost studies covering their movement have been supplied, and we lack that aid in passing upon the rates. Our judgment must, therefore, chiefly be guided by rate comparisons, with the scales proposed by the carriers fixing the maximum limit which under the circumstances can reasonably be considered. In arriving at our conclusion, we have taken into consideration those scales, those proposed by the carriers in 1917, those fixed by the Georgia commission, those proposed by complainants and interveners, those which we have prescribed in this and other territory in prior cases, and the prevailing level of the rates which now move the traffic. However we have heretofore adverted to the fact that this traffic moves longer distances in the South than it does in other territories. The carriers apparently recognize the importance of having rates that will permit the continuance of the long-haul movement of this traffic and have proposed single-line rates for movements beyond 400 miles, the general level of which does not here appear unreasonable. Viewing the rates proposed by the carriers for [fol. 62] these longer hauls as the maximum basis which should here be considered, we find that for distances beyond 400 miles they have on the whole justified the reasonableness of the general level of their proposed single-line rates. These proposed rates, however, are not properly graded and in order to have a harmonious scale regrading has been necessary. This will bring about slight reductions in some instances and slight increases in others. It is to be understood that the rates herein approved for the longer hauls are made in the light of the peculiar circumstances surrounding the movement of this low-grade traffic in the South and are not to be taken as a precedent in fixing reasonable rates on other traffic.

We find that the rates maintained on sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, by defendants in No. 17699 from Montgomery, Ala., and by defendants in No. 17764 (Sub-No. 1) from Chattanooga, Tenn., and by defendants in No. 17763 from Montgomery and Chattanooga, to destinations in Georgia and Mississippi and that the rates maintained by respondents in No. 17517, for the interstate transportation of sand gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points in the State of Georgia, and between points in the State of Georgia and points in other States in southern territory, except Florida, are and for the future will be, unreasonable to the extent that they exceed, or may exceed, rates set forth in the following tables, subject to a minimum weight of 90 per cent of the marked capacity of the car, except that when car is loaded to full visible capacity actual weight shall govern:

[fol. 63] Table A

Distance scales for interstate application are over standard or trunk lines. Rates are in cents per net ton, as follows:

Distance	Single line rate Cents	Joint-line rate Cents
10 miles and under	50	65
20 miles and over 10	55	70
30 miles and over 20	60	75
40 miles and over 30	70	85
60 miles and over 40	80	95
80 miles and over 60	90	105
100 miles and over 80	100	115
125 miles and over 100	110	125
150 miles and over 125	120	135
175 miles and over 150	130	140
200 miles and over 175	135	145
230 miles and over 200	140	150
260 miles and over 230	150	160
290 miles and over 260	160	170
320 miles and over 290	165	175
360 miles and over 320	175	180

Distance	Single-line rate Cents	Joint-line rate Cents
400 miles and over 360	185	190
440 miles and over 400	195	200
480 miles and over 440	205	210
520 miles and over 480	215	215
560 miles and over 520	225	225
600 miles and over 560	235	235
640 miles and over 600	245	245
680 miles and over 640	255	255
720 miles and over 680	265	265
760 miles and over 720	275	275
800 miles and over 760	285	285

Table B

When the transportation is in whole or in part over either of the so-called short lines shown in Appendix B, rates are to be determined as follows:

Apply the rates applicable under appropriate scale or scales above set forth in Table A, plus the following arbitrary which is to accrue solely to the short line: Arbitrary 25 cents per net ton.

In determining whether hauls are single-line or joint-line, carriers under common control or management shall be regarded as one line. All of the defendants and respondents are to be classed as standard lines for the purpose of these findings, except those short lines for which special rate treatment is herein accorded.

In computing distances for the application of the foregoing rates, we find that the shortest routes shall be used over which carload traffic can be moved without transfer of lading.

We further find that the rates maintained on gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, by defendants in No. 17699 (Sub-No. 1) from Montgomery, Ala., and by defendants in No. 17764 from Chattanooga, Tenn., to destinations in Georgia and Mississippi are, and for the future will be, unduly preju- [fol. 64] dicial to complainants at Montgomery and Chattanooga, and unduly preferential of shippers of slag, in

carloads, from Birmingham, Gadsden, Anniston and other slag-producing points in northern Alabama, and from Copperhill, Tenn., to the extent that they exceed, distance considered, the rates contemporaneously maintained by said defendants on slag, in carloads, from the Alabama points above referred to and from Copperhill, Tenn., to the same destinations, subject to the application of the rates under the scales above set forth as maximum rates.

We have heretofore discussed the 79-cent rate maintained by the Atlanta, Birmingham & Atlantic and the Central of Georgia on sand from points in the Junction City, Ga., district mentioned in No. 17689, to Birmingham. It is admitted to be a relatively low rate and, as has been stated, is maintained in order that the Junction City district shippers may ship sand to Birmingham on a parity with Montgomery shippers. The rates between points in Alabama are not in issue in these proceedings and the above-named carriers serving the Junction City district and the shippers there located strongly urge that we do not disturb the present parity of rates, at least until the rates from Montgomery to Birmingham are revised. To do so, they assert, will mean serious loss to the Junction City district shippers as well as the carriers. We are impressed with this contention and in view of the situation disclosed we find that we are not here justified in disturbing the present adjustment. Under the circumstances disclosed, No. 17689 will be dismissed without prejudice to the right of complainants to seek a reopening of same in the event that as a result of these proceedings the intrastate rates between points in Alabama are revised to the level herein approved for interstate application and the Atlanta, Birmingham & Atlantic and the Central of Georgia do not follow with a like revision of the interstate rates from the Junction City district to Birmingham.

[fol. 65] Fourth-section Relief

No fourth-section applications were heard with these proceedings and no relief from the provisions of the fourth section will here be authorized in connection with the rates herein approved. Such carriers as may desire fourth-section relief may file with us appropriate applications for our determination.

Investigation and Suspension Docket No. 2470.

By the schedules now under suspension in No. 2470 the Louisville & Nashville proposes certain increases in rates on slag, in carloads, from Copperhill to points on its line in Georgia. Copperhill is located on what is known as the old main line of the Louisville & Nashville extending from Marietta, Ga., to Etowah, Tenn. The new line lies west of the old line and is a part of the present main line extending from Atlanta through Marietta and Cartersville, Ga., to Etowah and northward. Copperhill is 48 miles south of Etowah, the distance from Atlanta being 116 miles via the old line and 185 miles via the new.

Cartersville is on the new line 48 miles northwest of Atlanta. Keithsburg is on the old line 29 miles north of Marietta. The present rate on slag from Copperhill to points between Cartersville and Atlanta, both inclusive, is $1.02 for an average distance via Etowah, the route over which the traffic moves, of 159.5 miles. The $1.02 rate likewise applies from Copperhill to Keithsburg and points beyond on the old line intermediate to Marietta, and traffic to such points moves over the old line for an average distance of approximately 80 miles. By the schedules under suspension it is proposed to increase the $1.02 rate to all points, Cartersville to Atlanta, to $1.26, except that $1.30 is proposed to Atlanta and $1.17 to Marietta and two other near-by points. To Keithsburg and other points interme- [fol. 66] diate to Marietta on the old line, the suspended schedules propose to increase the $1.02 rate to $1.17. The Louisville & Nashville, as has been stated, now concurs in the scale of rates proposed by the other trunk-line carriers in these proceedings. Therefore in lieu of the suspended rates it now proposes that rates on slag from Copperhill to the points above described be constructed on the basis of the carriers' proposed single-line scale with distance to the points Cartersville to Atlanta computed via Etowah and the new line. Under this proposal the rates to the points last mentioned would be from 5 to 14 cents higher than those now under suspension. To Keithsburg and points intermediate to Marietta the proposal would result in rates lower than the rates under suspension and would slightly reduce some of the present rates.

The distances from Copperhill to Cartersville and points south thereof on the Atlantic division are greater via Eto-

wah and the new line than they are via the old line and Marietta but the Louisville & Nashville introduced evidence to show that transportation over the old line is attended with many difficulties in that it passes through a mountainous country and has heavy grades and many sharp curves. It states that the route from Copperhill via Etowah to points located on the Atlanta division and beyond is a more practicable one and it desires to continue to use and to compute distances via this route on traffic to and from these points.

As has been shown, the distance from Copperhill to Atlanta via the old line is 116 miles as compared with 185 miles via Etowah and the new line. To Cartersville the distances from Copperhill are 123 and 137 miles over the respective routes. The carriers' proposed single-line scale would result in rates to Atlanta and Cartersville, computings the distances via Etowah, of $1.44 and $1.26, as compared with $1.17 and $1.22, computed on the distances via the old line. Under the scale on slag herein approved the [fol. 67] rates computed on the distances via the old line would be $1.10 to both Atlanta and Cartersville, and 90 cents to Keithsburg and other points not more than 80 miles distant from Copperhill, and $1 to those points between 80 and 100 miles from the latter point.

The evidence shows that traffic moving between points intermediate to Etowah and Marietta on the old line is now routed over the old line. In other words, a shipment originating on the old line at Cambria, Tenn., which is 3 miles south of Etowah and 45 miles north of Copperhill, destined to Westoak, on the old line 4 miles north of Marietta, would move over practically the entire length of the old line.

We have heretofore in these proceedings approved a definite rule for computing distances. No doubt instances could be cited by other carriers parties to these proceedings which would have as much merit as the situation here presented by the Louisville & Nashville. We are of the opinion that no exception from the approved rule should here be authorized. This question was fully discussed in the second supplemental report in Southern Class Rate Investigation, 113 I. C. C. 200, and we adhere to the conclusions there expressed.

We find that the proposed schedules have not been justified. Their cancellation will be required without prejudice to the right of respondent to file new schedules establishing rates on slag from Copperhill to the destinations involved on the basis of the standard single-line basic scale of rates on slag hereinbefore approved in this report, distances to be computed via the shortest route.

Intrastate Rates

The changes in rates both intrastate within Georgia and interstate to Georgia brought about by the Georgia commission's order of February 25, 1925, have been fully discussed. [fol. 68] We have been impressed with what appears to us to have been the broad-minded attitude taken by the Georgia commission when it undertook the revision of these rates which resulted in its order of February 25, 1925. This order as we have seen resulted in raising many depressed intrastate rates applying between important producing and consuming points, and subsequently had the effect of bringing about substantial increases in important depressed interstate rates. Considering the results brought about by this order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance scale of rates for application alike to the interstate transportation of all of the commodities here considered. There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any order in No. 17517 for the future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved.

Mississippi

In No. 17763 it is alleged, among other things, that the rates maintained by defendants therein named on sand and

gravel from Montgomery and Chattanooga to destinations in Mississippi are unreasonable and unduly prejudicial in favor of intrastate shippers of the same commodities be-[fol. 69] tween points in Mississippi. The reasonableness of the interstate rates to Mississippi points in so far as involved has been considered.

At the hearing the intervening Mississippi interests moved to dismiss this complaint in so far as it attempts to bring in issue the Mississippi intrastate rates, and they have since supported this motion by argument. Their contention is that the complaint does not conform to our Rules of Practice in that its allegations as to violation of section 3 are general, vague, and indefinite, and that it fails to point out any locality or localities in Mississippi from or to which the alleged unduly prejudicial rates apply.

In view of the finding hereinafter made it appears unnecessary to further discuss this motion.

The evidence shows that various intrastate scales of rates on sand and gravel are maintained within Mississippi by authority of the Mississippi commission. The Mobile & Ohio publishes a scale of rates on sand and gravel for all purposes, which scale ranges from 47 cents at 5 miles to 78 cents at 100 miles and to $1.49 at 270 miles. This same scale applies over the Illinois Central, Yazoo & Mississippi Valley, New Orleans & Northeastern, Louisville & Nashville, Alabama & Vicksburg, and the Frisco, when the commodities are consigned to Federal, State, county, or municipal officers, or their agents, for governmental purposes. This scale is much lower than any of the scales proposed in these proceedings, and according to the testimony is about the lowest maintained in the South. All the carriers above mentioned, with the exception of the Mobile & Ohio, maintain a somewhat higher scale on sand for the shorter hauls and various and substantially higher scales of rates on gravel when the commodities are not to be used for municipal purposes. Besides these different scales it was testified that there are numerous specific point-to-point rates [fol. 70] which are on a different basis from that provided by any of the scales. The record indicates that most of this traffic moves between points in Mississippi on these low municipal rates prescribed by the Mississippi commission. There are no joint-line scale on these commodities

within Mississippi and rates on shipments moving over two or more lines are made by combination of proportional rates which are 10 per cent less than the corresponding local rates. In so far as disclosed by this record the Mississippi intrastate rates on sand and gravel appear to be on no consistent basis, yet the question here presented is whether they are shown on this record to operate to the prejudice of these complainants.

The evidence shows that complainants do not ship sand and gravel into Mississippi, but it fails to show that the intrastate rates in Mississippi have prevented such movement.

Due to the lesser cost, clay gravel is used chiefly in improved highway construction in Mississippi. Clay gravel is not produced in the Delta district and the evidence shows that it moves in large volume into this district for highway construction. It is also used for railroad ballast.

The intervener Tri-State Road Material Association is an association of gravel and sand producers with plants located in Mississippi, western Tennessee, and western Kentucky.

Testimony was offered on behalf of this intervener to the effect that within this territory there are 32 washed-gravel and clay-gravel plants, 22 of which are located in Mississippi. These various plants it is asserted, furnish practically all the requirements of the State of Mississippi. Some of the important producing points in northern Mississippi are at Iuka, on the main line of the Southern; at Columbus, located on the Mobile & Ohio and the Colum- [fol. 71] bus & Greenville; and at Golden on the Illinois Central. In the southern part of the State there are plants at Hattiesburg, on the New Orleans & Northeastern; at Waynesboro, on the Mobile & Ohio; and at Bay St. Louis, on the Louisville & Nashville. In the western part of the State there is a large washed-gravel plant at Greenville. There are also large productions of washed gravel at Memphis.

The only carriers made defendant in No. 17763 which have a single-line route from Montgomery into Mississippi are the Mobile & Ohio and the Louisville & Nashville. The Southern, the principal single line from Chattanooga into Mississippi, is not named; nor are the Alabama & Vicksburg and the Columbus & Greenville, which lines cross Mis-

sissippi from east to west: The Illinois Central and the Yazoo & Mississippi Valley are two of the principal carriers of these commodities within Mississippi. The former is named as defendant in the complaint, but took no part in the hearing. The Yazoo & Mississippi Valley was not named defendant, but complainants at the hearing moved to make this line a defendant on the authority of a telegram received from its counsel and introduced in evidence, to the effect that the Yazoo & Mississippi Valley did not object to being named defendant. The Mississippi interveners object to this proposed amendment, in so far as it attempts to bring in issue the intrastate rates and charges of this line in Mississippi, on the ground that State authorities of Mississippi have not been duly notified as required by the act and our Rules of Practice. Aside from this objection the telegram is indefinite in that it fails to name any docket number or title of any case. Under the circumstances the amendment is denied.

Aside from testimony going to show that a large part of the intrastate movement in Mississippi is over lines [fol. 72] not made defendants it was also shown that shipments could not be made from Montgomery into Mississippi over lines that are named defendants without passing through or near Mississippi points of production. For example, there are four plants at Columbus, Miss., with a normal annual production of sand and gravel estimated at 400,000 tons. Columbus is on the eastern border of Mississippi, 180 miles from Montgomery over the Mobile & Ohio, and shipments over this line from the latter point would pass through Columbus. Shipments from Montgomery via Birmingham and the Frisco beyond to northeastern Mississippi would pass through Amory, Miss., where two gravel plants are located. A similar situation would be encountered by movements from Montgomery to the southern part of Mississippi over the Louisville & Nashville.

It is further shown that there is a large movement of clay gravel from Iuka, located in northeastern Mississippi, to the Delta district. The testimony is that such shipments generally move over interstate routes composed of the Southern to Memphis and the Illinois Central or Yazoo & Mississippi Valley beyond. It was also testified that there is a considerable movement from Iuka to Mississippi

points via the interstate route made up of the Southern to Middleton, Tenn., and the Gulf, Mobile & Northern beyond.

We find that the intrastate rates on sand and gravel within Mississippi are not shown to be unduly prejudicial to complainants.

Appropriate orders embodying our findings herein will be entered.

[fol. 73] ATCHISON, Commissioner, concurring:

I concur in the foregoing report only because the scale as prescribed for the longer distances is substantially that proposed by the carriers. In my view, the grading flattens out too quickly. It provides additional compensation of only 20 cents per ton, or 2 mills per ton-mile, for an added haul of 100 miles in the case of certain of the 100-mile blocks, which is obviously below the cost of service and imposes an undue burden upon other traffic. I am authorized to state that Commissioner Woodlock joins in this expression.

Commissioner Hall did not participate in the disposition of this case.

[fol. 74] Appendix A

List of Shipping Points of Sand, Gravel, Crushed Stone, and Slag in the States of Alabama, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia Stipulated by Consent of the Parties

Shipping point	Railroad location	Product
Alabama:		
Spruce Pine	Northern Alabama Ry.	Sand and gravel.
Argyle	A., B. & A. Railway	Sand and chert.
Chelsea	do	Do.
Lorme	do	Do.
Sheffield	L. & N. R. R.-Sou. Ry.	Slag.
Hobbs Island	N., C. & St. L. Ry.	Sand and gravel.
Gadsden	N., C. & St. L. Ry. A. G. S. Railroad. L. & N. Railroad.	Slag and sand.
Miller	A. G. S. Railroad.	Sand and gravel.
Cumberland	N., C. & St. L. Ry.	Crushed stone.
Montgomery	A. C. L. R. R.-C. of G. R. R. M. & O. R. R.-S. A. L. Ry. W. Ry. of Ala.	Sand and gravel.
Colrock	Sou. Railway	Asphaltic limestone.
Margerum	do	Do.
Flomaton	L. & N. R. R.	Sand and gravel.
Birmingham	A. G. S. R. R.-A. B. & A.-St. L.-S. F. Ry.-I. C. R. R.-L. & N. R. R.-M. & O. R. R.-S. A. L. Ry.-Sou. Ry.	Slag.

Shipping point	Railroad location	Product
Alabama:		
Ormoor	L. & N. R. R.	Slag.
Woodard	A. G. S.-A. B. & A.-St. L.-S. F. Ry.-I. C. R. R.-L. & N. R. R.-S. A. L. Ry.-Sou. Ry.	Do.
East Birmingham	A. G. S. R. R.-Sou. Ry.	Do.
Boyles	L. & N. R. R.	Do.
Bessemer	A. G. S.-A. B. & A.-St. L.-S. F. Ry.-I. C. R. R.-L. & N. R. R.-S. A. L. Ry.-Sou. Ry.	Do.
Nor. Birmingham	A. G. S.-I. C. R. R.-L. & N.-Sou. Ry.	Slag and crushed stone.
Thomas	A. G. S. R. R.-L. & N. R. R.	Slag.
Anniston	A. G. S. R. R.-Sou. Ry.	Do.
Alabama City	L. & N. R. R.-N. C. & St. L.-Sou. Ry.	Do.
Ketona	L. & N. R. R.	Crushed stone.
Vanns	do	Do.
Cobb City	do	Do.
Dolcito	do	Do.
Graystone	do	Do.
Albany	do	Do.
Grants Quarry	do	Do.
Calera	Sou. Ry.-L. & N. R. R.	Do.
Gate City	L. & N. R. R.	Do.
Brownson	do	Do.
[fol. 75] Mitylene	S. A. L. Ry.	Clay gravel.
Jacksons Lake	L. & N. R. R.	Sand and gravel.
Prattville Jct.	do	Do.
Coosada	do	Sand.
Okatmulke	do	Sand and gravel.
Cantelou's Spur	W. Ry. of Ala.	Clay gravel.
Rice	do	Do.
Chehaw	do	Sand and gravel.
Arrowhead	do	Do.
Mobile	L. & N. R. R.-Sou. Ry. M. & O. R. R.-G. M. & N.	Do.
Georgia:		
Albany	A. C. L. R. R.-C. of Ga. Ry. Ga. Nor.-G. S. W. & G.-S. A. L. Ry.	Sand.
Bolivar	L. & N. R. R.	Crushed stone.
Fairmount	do	Do.
Charing	A. B. & A.	Sand.
Clarks	do	Do.
Greenfield	do	Do.
Harkey	do	Do.
Marck	do	Do.
Morning Star	do	Do.
Norwich	do	Do.
Junction City	A. B. & A.-C. of Ga.	Do.
Paschal	do	Do.
Rollo	Sou. Ry.	Do.
Gaillard	do	Do.
Howard	Co. of Ga.	Do.
Stone Mountain	Ga. R. R.	Crushed stone.
Lithonia	do	Do.
Stockbridge	So. Ry.	Do.
Macon district	Sou. Ry-C. of Ga.	Do.
Altoona	N. C. & St. L.	Sand.
Graysville	do	Crushed stone.

Shipping point	Railroad location	Product
Georgia:		
Dry Ridge	C. of Ga.	Sand.
Fort Gaines	do	Gravel.
Georgetown	do	Do.
Bolingbroke	do	Crushed stone.
Granite Hill	Ga. R. R.	Do.
Ladds	S. A. L. Ry.	Do.
Whitestone	L. & N. R. R.	Do.
Allon	Sou. Ry.	Sand.
Holton	do	Crushed stone.
Elberton	S. A. L. Ry.	Do.
Oglesby	do	Do.
Cedartown	do	Do.
[fol. 76] Everett	do	Sand.
Williams	A. C. L. R. R.	Do.
Safford	do	Do.
Rex	Sou. Ry.	Do.
Helmar	do	Do.
Mississippi:		
Batesville	I. C. R. R.	Road gravel.
Charleston	Y. & M. V. R. R.	Clay gravel.
Avalon	do	Clay and washed gravel.
Greenville	Y. & M. V.-C. & G.	Sand and gravel.
Crystal Springs	I. C. R. R.	Clay gravel.
Brookhaven	do	Sand and gravel.
Kinnard	N. O. G. N.	Do.
Saratoga	G. & S. I.	Clay gravel.
Hattiesburg	G. & S. I.-N. O. & N. E.-M. C.	Washed sand and gravel.
Columbus	C. & G.-M. & O.-Sou.	Washed sand and gravel and clay gravel.
Amory	Frisco	Washed sand and gravel.
Oldham	Sou.	Clay gravel.
Gravel Siding	do	Do.
Morrison	do	(1)
Golden	I. C.	(1)
Gravel Pit	do	(1)
South Carolina:		
Buque	Sou.	Crushed stone.
Beverly	do	Do.
Dillon	A. C. L.-S. A. L.	Sand and gravel.
Wateree	Sou.	Sand and washed gravel.
Summit	do	Sand.
Pon Pon	A. C. L.	Sand-gravel.
Hoovers	do	Washed gravel.
Bennettsville	A. C. L.-B. & C.-R. I.	Do.
Beach Island	C. & W. C.	Clay gravel.
Musterfield	do	Do.
Savannah R'vr Pit	do	Do.
Moores Pit	do	Do.
Ellenton	do	Do.
Loland	do	Do.

[1] Character of product unknown.

Shipping point	Railroad location	Product
South Carolina:		
Steel Creek	C. & W. C.	Clay gravel.
Columbia	A. C. L.-S. A. L.-Sou.	Crushed stone, sand, and gravel.
Park Hill	Sou.	Crushed stone.
Liberty	do	Do.
Pacolet	do	Do.
Travelers Rest	G. & N.	Do.
Palmetto	A. C. L.	Do.
[fol. 77] **Tennessee:**		
Newson	N. C. & St. L.	Crushed stone.
Mimms	do	Do.
Sparta	do	Do.
Summitville	do	Do.
Cowan	do	Do.
Sherwood	do	Do.
Knoxville	L. & N.-Sou.	Sand and gravel.
Strawberry plains	Sou.	Crushed stone.
Mascot	do	Do.
Copperhill	N. & N.	Slag.
Franklin	do	Crushed stone.
Carters Creek	do	Do.
Oakdale	Sou.	Sand.
La Grange	do	Do.
Saulsbury	do	Do.
Lenoir City	do	Do.
Camden	N. C. & St. L.	Gravel.
Memphis	L. & N.-I. C.-Sou.-N. C. & St. L.	Sand and gravel.
Nashville	L. & N.-N. C. & St. L.-I. C.	Do.
Chattanooga	Sou.-N. C. & St. L.-L. A. & G.	Do.
Estill Springs	N. C. & St. L.	Do.
Goodrich	do	Slag.
Cowan	do	Do.
South Pittsburg	do	Do.
Sawyers Mill	do	Sand.
Lipe	do	Do.
Sewanee	do	Do.
Nido	do	Do.
Virginia:		
Petersburg	S. A. L.-A. C. L.	Sand and gravel.
Richmond	S. A. L.	Do.
Ellersbee	A. C. L.	Do.
Arundel Siding	do	Do.
Massaponax	R. F. & P.	Do.
North Carolina:		
Buque	Sou.	Crushed stone.
Grayseburg	S. A. L.	Sand and gravel.
Greystone	do	Crushed stone.
Lilesville	do	Sand and gravel.
Pee Dee	do	Do.
Mount Holly	do	Sand.
Belfast	A. C. L.	Gravel.
Gastonia	do	Do.
Goldsboro	do	Do.
Greenville	do	Do.
Paywell	do	Do.
Wilmington	do	Do.
Rolsville Quarry	do	Do.

[fol. 78] Appendix B

Short Lines in Behalf of Which Relief is Proposed

Bowdon Railway Company.
Collins & Glennville Railroad Company.
Elberton & Eastern Railroad Company.
Flint River & Northeastern Railroad Company.
Georgia & Florida Railway.
Georgia, Ashburn, Sylvester & Camilla Railway Company.
Georgia, Florida & Alabama Railway Company.
Georgia Northern Railway Company.
Greene County Railroad Company.
Louisville & Wadley Railroad Company.
Macon, Dublin & Savannah Railroad Company.
Sandersville Railroad Company.
Savannah & Atlanta Railway.
Savannah & Statesboro Railway Company.
Shearwood Railway Company.
Statesboro Northern Railway.
Sylvania Central Railway Company.
Talbotton Railroad Company.
Tallulah Falls Railway Company.
Union Point & White Plains Railroad Company.
Wadley Southern Railway Company.
Washington & Lincolnton Railroad Company.
Waycross & Southern Railroad Company.
Wrightsville & Tennille Railroad Company.

[fol. 79] Orders

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 21st Day of January, A. D. 1927

(I.)

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

No. 17699

ROQUEMORE GRAVEL COMPANY and ALABAMA SAND & GRAVEL COMPANY

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY and B. L. Bugg, Receiver; Atlanta & West Point Rail Road Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Florida East Coast Railway Company, Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile & Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company, Macon, Dublin & Savannah Railroad Company, Mississippi Central Railroad Company, Mobile & Ohio Rail Road Company, The Nashville, Chattanooga & St. Louis Railway, New Orleans Great Northern Railroad Company, Seaboard Air Line Railway Company, Southern Railway Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company; New Orleans & Northeastern Railroad Company; Cincinnati, Burnside & Cumberland River Railway Company; Georgia Southern & Florida Railway Company, St. Louis-San Francisco Railway Company, and The Western Railway of Alabama

No. 17699 (Sub-No. 1)

SAME

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY and B. L. Bugg, Receiver; Atlanta & West Point Rail Road Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Florida East Coast Railway Company, Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile & Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company; Macon, Dublin & Savannah Railroad Company, Missis-
[fol. 80] sippi Central Railroad Company, Mobile & Ohio Rail Road Company, The Nashville, Chattanooga & St. Louis Railway, New Orleans Great Northern Railroad Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, Cincinnati, Burnside & Cumberland River Railway Company, New Orleans & Northeastern Railroad Company, St. Louis-San Francisco Railway Company, and The Western Railway of Alabama

(II.)

No. 17764

DIXIE SAND & GRAVEL COMPANY

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY and B. L. Bugg, Receiver; Atlanta & West Point Rail Road Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Florida East Coast Railway Company, Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile & Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company; Macon, Dublin & Savannah Railroad Company, Mississippi Central Railroad Company, Mobile & Ohio Rail

Road Company, The Nashville, Chattanooga & St. Louis Railway, New Orleans Great Northern Railroad Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans & Northeastern Railroad Company, St. Louis-San Francisco Railway Company, Seaboard Air Line Railway Company, and The Western Railway of Alabama.

No. 17764 (Sub-No. 1)

SAME

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY and B. L. Bugg, Receiver; Atlanta & West Point Rail Road Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Florida East Coast Railway Company, Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile & Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company; Macon, Dublin & Savannah Railroad Company, Mississippi Central Railroad Company, Mobile & Ohio Rail Road Company, The Nashville, Chattanooga & St. Louis Railway; New Orleans Great Northern Railroad Com-
[fol. 81] pany, Seaboard Air Line Railway Company, Southern Railway Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans & Northeastern Railroad Company, St. Louis-San Francisco Railway Company, and The Western Railway of Alabama.

No. 17763

ROQUEMORE GRAVEL COMPANY, ALABAMA SAND & GRAVEL COMPANY, and DIXIE SAND & GRAVEL COMPANY

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY and B. L. Bugg, Receiver; Atlanta & West Point Rail Road Company, Atlantic Coast Line Railroad Company, Cen-

tral of Georgia Railway Company, Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile & Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company; Macon, Dublin & Savannah Railroad Company, Mississippi Central Railroad Company, Mobile & Ohio Rail Road Company, The Nashville, Chattanooga & St. Louis Railway, New Orleans Great Northern Railroad Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans & Northeastern Railroad Company, St. Louis-San Francisco Railway Company, Seaboard Air Line Railway Company, and The Western Railway of Alabama.

(III.) It appearing, That No. 17517 is a proceeding instituted by the commission upon petition filed, and that Nos. 17699, 17699 (Sub-No. 1), 17763, 17764, and 17764 (Sub-No. 1) were assigned for hearing therewith:

It further appearing, That a full investigation of the matters and things involved has been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the defendants in Nos. 17699, 17764 (Sub-No. 1), and 17763, named above, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 1, 1927, and thereafter to abstain, from publishing, de-[fol. 82] manding, or collecting for the interstate transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from and to the points set out in the next succeeding paragraph hereof, rates in excess of those prescribed in said paragraph.

It is further ordered, That said defendants in Nos. 17699, 17764 (Sub-No. 1), and 17763, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 1 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the man-

ner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the interstate transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., respectively, to destinations on defendants' lines in Georgia and Mississippi, rates in amounts per ton of 2,000 pounds which shall not exceed those set forth in Table A of said report, provided, that where the transportation is in whole or in part over either of the so-called short-line defendants, namely, Georgia & Florida Railway, Georgia, Florida & Alabama Railway Company, and Macon, Dublin & Savannah Railroad Company, rates shall not exceed those determined under the scales set forth in Table A of said report plus an arbitrary not in excess of 25 cents per ton of 2,000 pounds, such arbitrary to accrue solely to the short line.

(IV.) It is further ordered, That defendants in No. 17699 (Sub-No. 1) and No. 17764, named above, accordingly as they participate in the transportation, be, and they are hereby notified and required to cease and desist, on or before June 1, 1927, and thereafter to abstain, from practicing the undue prejudice found in said report to exist, and from publishing, demanding, or collecting rates for the transportation of gravel (washed or unwashed) and clay gravel, [fol. 83] in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., respectively, to destination on defendants' lines in Georgia and Mississippi, which exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants in No. 17699 (Sub-No. 1) and No. 17764, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of gravel (washed or unwashed) and clay gravel, in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., respectively, to destinations on defendants' lines in Georgia and Mississippi, rates which shall not exceed, distance con-

sidered, the rates contemporaneously maintained by said defendants on slag, in carloads, from Birmingham, Gadsden, Anniston, and other slag-producing points in northern Alabama, and from Copperhill, Tenn., to the same destinations, subject to the application of the rates based on the scales hereinbefore prescribed from Montgomery and Chattanooga to destinations in Georgia and Mississippi as maximum rates.

It is further ordered, That carriers respondent in No. 17517, namely: Albama Great Southern Railroad Company; Albany Passenger Terminal Company; Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, Receiver; Atlanta Terminal Company; Atlantic Coast Line Railroad Company; Augusta Aiken Railway & Electric Corporation; Augusta Union Station Company; Augusta & Summerville Railroad Company; Atlanta & West Point Railroad Company; Arabia Granite Company; Bowden Railway Company; Central of Georgia Railway Company; Charleston & [fol. 84] Western Carolina Railway Company; Chattahoochee Railway Company; Collins & Glenville Railroad Company; Elberton & Eastern Railroad Company; Flint River & Northeastern Railroad Company; Gainesville Midland Railway, Gordon C. Carson, Receiver; Gainesville Midland Railway, Wm. B. Veazey, Receiver; Georgia, Ashburn, Sylvester & Camilla Railway Company; Georgia, Florida & Alabama Railway Company; Georgia & Florida Railway, John Skelton Williams, Receiver; Georgia Northern Railway Company; Georgia Railroad; Georgia Southern & Florida Railway Company; Georgia, Southwestern & Gulf Railroad Company; Greene County Railroad Company; Hartwell Railway Company; Louisville & Nashville Railroad Company; Louisville & Wadley Railroad Company; Macon, Dublin & Savannah Railroad Company; Macon Terminal Company; Millstead Railroad Company; Milltown Air Line Railway; Nashville, Chattanooga & St. Louis Railway; Sandersville Railroad Company; Savannah & Atlanta Railway, Chas. E. Gay, Receiver; Savannah & Atlanta Railway, T. B. Felder, Receiver; Savannah River Terminal Company; Savannah & Statesboro Railway Company; Savannah Union Station Company; Seaboard Air Line Railway Company; Shearwood Company; South Georgia Railway Company; South-

(V.)

ern Railway Company; Statesboro Northern Railway; St. Mary's Railroad Company; Stone Mountain Granite Corporation; Sylvania Central Company; Talbotton Railroad Company; Tallulah Falls Railway Company, J. F. Gray, Receiver; Tennessee, Alabama & Georgia Railway; Tennessee Electric Power Company; Union Point & White Plains Railroad Company; Wadley Southern Railway Company; Washington & Lincolnton Railroad Company; Waycross & Southern Railroad Company; Waycross & Western Railroad Company; and Wrightsville & Tennille Railroad Company, according as they participate in the transporta-[fol. 85] tion, be, and they are hereby, notified and required to cease and desist, on or before June 1, 1927, and thereafter to abstain, from publishing, demanding, or collecting for the interstate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points within the territory set forth in the next succeeding paragraph hereof, rates in excess of those prescribed in said paragraph.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act and thereafter to maintain and apply to the interstate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points in the State of Georgia, and between points in the State of Georgia and points in other States in southern territory, as described in the report herein, except Florida, rates in amounts per ton of 2,000 pounds which shall not exceed those set forth in Table A of said report, provided, that where the transportation is in whole or in part over either of the so-called respondent short lines set forth in Appendix B, to the report herein, rates shall not exceed those determined under the scales set forth in Table A of said report plus an arbitrary not in excess of 25 cents per ton of 2,000 pounds, such arbitrary to accrue solely to the short line.

(VI) It is further ordered, That the minimum carload weight to be published by defendants and respondents in

the above-entitled proceedings in connection with the rates herein prescribed shall be 90 per cent of the marked ca-
[fol. 86] pacity of the car, except when car is loaded to full visable capacity, actual weight shall govern.

It is further ordered, That defendants an respondents in the above-entitled proceedings shall use, in computing distances under the rates prescribed herein, the shortest routes over which carload traffic can be moved without transfer of lading. Lines under common control or management shall be considered as a single line in applying the rates prescribed.

And it is further ordered, That the above orders shall remain in force and effect until the further order of the commission.

No. 17689

ROQUEMORE GRAVEL COMPANY et al.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al.

This case being at issue upon complaint and answers on file, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part thereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

Investigation and Suspension Docket No. 2470

Sand, Gravel, and Slag from Alabama and Tennessee to Points in Georgia

It appearing, That by order dated July 31, 1925, the commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until November 29, 1925:

[fol. 87] It further appearing, That the operation of said schedules has been voluntarily deferred by respondents until February 27, 1927;

And it further appearing, That a full investigation of the matters and things involved has been had, and that the commission on the date hereof has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

(VII.) It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel the said schedules, on or before March 2, 1927, upon notice to this commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the interstate commerce act, without prejudice to the filing on 10 days' notice of new schedules in accordance with the conclusions expressed in the said report.

And it is further ordered, That this proceeding be discontinued.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 88] EXHIBIT B TO BILL OF COMPLAINT

Commissioners: James A. Perry, Chairman; Albert J. Woodruff, Vice-Chairman; Walter R. McDonald, Calvin W. Parker, Perry T. Knight. Robt. N. Springfield, Secretary. E. M. Price, Rate Expert. S. J. Smith, Jr., Special Attorney. J. Houston Johnston, Consulting Engineer.

GEORGIA PUBLIC SERVICE COMMISSION, ATLANTA

File 16384

March 13th, 1928.

Petition—Charles Barham, Chairman, Representing All Carriers Members Southern Freight Association and Petition—Southern Railway for Revision of Rates on Chert, Sand, Gravel, Slag, and Crushed Stone between Points in Georgia.

By Order, dated February 25, 1925, effective April 1, 1925, the Commission approved the general revision of all

rates on chert, gravel, sand, stone, etc., between points in Georgia, Section 5 of this order making the following provision:

"Ordered Further: (5) All carriers are authorized to cancel all class and commodity rates that are lower than the commodity rate schedules and classification ratings provided in this order and observe as a maximum the commodity rate schedules and classification ratings authorized herein, except that in no instance shall the rates on the commodities covered by this order be higher, between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other States, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul."

[fol. 89] The effect of the above stated order was to increase very materially the rates on these materials between points in Georgia where the preponderance of the movement was taking place, and in order for the carriers to take advantage of the increased rates approved, and comply with Section 5, it was necessary that they increase many of the then existing interstate rates from points in other States to points in Georgia. Carriers submitted a petition to the Commission for suspension of the effective date of its order on the grounds that they did not have sufficient time to make the necessary revision of the interstate rates to bring them in line with the intrastate rates approved, whereupon we suspended the application of Section 5 until August 1, 1925.

Certain Georgia carriers filed formal complaint with the Interstate Commerce Commission against the Georgia intrastate rates, alleging discrimination under Section 13 of the Interstate Commerce Act, this complaint being followed by complaints from certain shipping interests in Alabama and Tennessee, and as a result the Interstate Commerce Commission by its order, Docket 17517, et al., required all carriers in Georgia to become parties to the proceeding for the purpose of determining whether or not the Georgia rates caused undue discrimination against interstate commerce. The investigation of the Interstate Commerce Commission resulted in its order dated January

21, 1927, 122 I. C. C. 133. The carriers' petition, which we now have before us is for approval of the rates prescribed by the Interstate Commerce Commission in its Docket 17517, et al., 122 I. C. C. 133. At pages 169 and 170, the Interstate Commerce Commission stated:

"The changes in rates both intrastate within Georgia and interstate to Georgia brought about by the Georgia Commission's Order of February 25, 1925, have been fully discussed. We have been impressed with what appears to us to have been the broad-minded attitude taken by the Georgia Commission when it undertook the revision of [fol. 90] these rates which resulted in its Order of February 25, 1925. This order as we have seen resulted in raising many depressed intrastate rates applying between important producing and consuming points, and subsequently had the effect of bringing about substantial increases in important depressed interstate rates. Considering the results brought about by this Order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance scale of rates for application alike to the interstate transportation of all of the commodities here considered. There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia Commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any Order in No. 17517 for the future insofar as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia Commission will cooperate in authorizing such revision as may be necessary to bring their rates into harmony with the interstate adjustment herein approved."

We are in accord with the views of the Interstate Commerce Commission that the intrastate rates should not cause undue discrimination against interstate commerce, neither should interstate rates result in undue discrimination against intrastate commerce, and with this end in view, it

is the purpose of this Commission to prescribe such rates as will permit of free movement and competition both inter and intrastate.

The rates which we prescribed on sand, unwashed gravel and chert, effective April 1, 1925, were slightly lower than the rates which we approved on washed gravel, crushed stone and slag. However, the rates which were prescribed by the Interstate Commerce Commission in its Docket [fol. 91] 17517 provide for the same rates on all these commodities, the general level of the single line rates being approximately the same as the rates which we prescribed on crushed stone, slag, and washed gravel. The rates which we prescribed provided for a joint line differential for hauls over two or more lines for distances under 100 miles, whereas the rates prescribed by the Interstate Commerce Commission in Docket 17517 provide for a joint line differential for all distances under 480 miles.

The investigation which we have made shows very keen competition between the producers of all these materials at the principal markets, both inter and intrastate, the producers in Georgia coming in direct competition with the producers in Alabama, Tennessee and South Carolina. In our opinion, to approve the gradation of the scale prescribed by the Interstate Commerce Commission would work great injury and damage to shippers and carriers on Georgia intrastate traffic, and for that reason we are prescribing a revised scale, in order that all interests may be preserved.

In Southern Class Rate Investigation, 113 I. C. C. 200, Rates on Fertilizers and Fertilizer Material between Points in Southeastern Territory I. C. C. Docket 16295, Southern Cement Rates I. C. C. 15806 and Georgia Peach Growers' Exchange, et al., Docket 16462, the Interstate Commerce Commission did not provide for a differential to be added for joint line movement over two or more lines. It is our opinion that the principles, with regard to joint line rates, as laid down by the Interstate Commerce Commission in these cases are entirely proper, and it is our conclusion that this principle should prevail in this case.

Should we approve the joint line differentials for application intrastate in Georgia which have been approved by the Interstate Commerce Commission for interstate application in Docket 17517, it would result in discrimination

between the producers of these materials within the State [fol. 92] of Georgia, and would place the producers in Georgia at a great disadvantage with their competitors in the States of Alabama and Tennessee, this condition being brought about on account of the location of the producing plants in Georgia, and the necessity for joint line movement to points of consumption that are reached by single line movement from producing points in other States. The rates which we are approving in the following Order, in our opinion, are just and reasonable, and will not be preferential to Georgia producers, or result in undue discrimination against interstate producers. It is therefore,

Ordered: (1) That effective on and after May 1, 1928, and until the further Order of this Commission, the rates shown in Appendix A, attached hereto, and made a part of this Order, shall be the maximum rates to be charged by Freight Tariff Class "A" and Freight Tariff Class "B" railroads between points wholly within the State of Georgia, and to be used and applied by each of the railroads operating within the State of Georgia, in the manner and as hereinafter directed.

Ordered Further: (2) That the ratings provided for in this Order shall be applied to all Freight Tariff Class "A" and Freight Tariff Class "B" railroads, as designated in Appendix B, attached hereto, and made a part hereof.

Ordered Further: (3) That the Rate Tables, as shown in Appendix A, shall be applied as follows:

Rate Table No. 1. To single line application between points within this State, on each of the severally named railroads in Freight Tariff Class "A".

Rate Table No. 2. To joint line application between points within this State, located on two or more of the severally named railroads in Freight Tariff Class "A".

Rate Table No. 3. To joint line application between points located within this State, located on one or more Freight Tariff Class "A" railroads, and one or more Freight Tariff Class "B" railroads. Also between points [fol. 93] located on one or more Freight Tariff Class "A" railroads, when the short line distance is constructed in connection with a Freight Tariff Class "B" railroad, and the rate is lower than provided for in the application of Rate Table No. 1 or No. 2. Also between points on one or more Freight Tariff Class "B" railroads, when the short

line distance is constructed in connection with a Freight Tariff Class "A" railroad, and the rate is lower than provided for in the application of Rate Tables No. 4 or No. 5.

Rate Table No. 4. To single line application between points within this State, on each of the severally named railroads in Freight Tariff Class "B".

Rate Table No. 5 To joint line application between points within this State, located on one or more of the severally named railroads in Freight Tariff Class "B".

Ordered Further: (4) That on or before the effective date of this Order, all class and commodity rates between points within this State that are higher than the rate schedules and classification ratings provided for in this Order shall be cancelled, and the rate schedules and classification ratings provided in this Order observed as a maximum.

Ordered Further: (5) All carriers are authorized to cancel all rates on the commodities herein provided for that are lower than the rate schedules and classification ratings provided in this Order and observe as a maximum the rate schedules and classification ratings authorized herein, except that in no instance shall the rates on the commodities covered by this Order be higher, between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other States, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul. [fol. 94] Ordered Further: (6) The Commission's Freight Rule No. 27 is hereby suspended, and superseded by Rate Tables 2, 3 and 5, in constructing joint line rates on the commodities covered by this order.

Ordered Further: (7)

(1) Joint rates between Freight Tariff Class "A" railroads, shall be divided on percentages arrived at by using the local rate of each line to and from the Junction or transfer point as factors:

(2) Joint rates between Freight Tariff Class "A" and Freight Tariff Class "B" railroads shall be divided by allowing the Freight Tariff Class "A" railroad the same

revenue or proportion of the joint rate as it would receive in connection with a Freight Tariff Class "A" road, the remainder of the joint rate to accrue to the Freight Tariff Class "B" road or roads; except, that where the joint rate is made by use of the Freight Tariff Class "B" scale and traffic is handled jointly by Freight Tariff Class "A" and Freight Tariff Class "B" roads, the Freight Tariff Class "B" road shall receive the same revenue or proportion of the joint rate as if the traffic had been handled jointly by Freight Tariff Class "B" roads, the remainder of the joint rate to accrue to the Freight Tariff Class "A" road or roads.

(3) Joint rates between Freight Tariff Class "B" roads shall be divided in the same manner as provided for Freight Tariff Class "A" roads.

(4) The basis for the division of rates provided for herein is not intended to prevent carriers from agreeing among themselves to the division of joint rates on any other basis that may be satisfactory to all parties concerned.

Ordered Further: (8) That when, by the use of the schedules of rates authorized in this Order, rates are established between competitive points by a carrier or carriers whose lines form the lowest rate making route, the carrier or carriers forming the longer distance, or higher rate making route, are permitted to meet such competition, and [fol. 95] to charge higher rates at intermediate points, but in no instance shall rates be charged higher than for the single or joint line scale of rates authorized herein, for the actual distance, via the route making the lowest rate to, from, or between such intermediate points. In instances where the carriers establish between any points, lower rates than authorized herein, no higher rates shall be charged at any intermediate point, without the approval of the Commission having first been obtained.

By order of the Georgia Public Service Commission.

(Signed) James A. Perry, Chairman. Robt. N. Springfield, Secretary.

[fol. 96] Appendix "A"

Commodity Group No. 22-A

Maximum Rates to be applied on chert, gravel, (sand or clay gravel, washed or unwashed), sand, slag (granulated, lump or pulverized in packages or in bulk), crushed stone, broken stone, rubble stone, stone screenings, stone flagging, carload, minimum weight to be charged for 80,000 pounds, excess in proportion, except where a car of less than 80,000 pounds capacity is furnished the marked capacity of the car shall be charged for

(Rates in Centers per Ton 2,000 Pounds)

Rate tables	1 & 2	3	4 & 5
Distances.			
5 Miles and Under	50	60	60
10 " " Over 5	50	60	60
15 " " " 10	55	65	65
20 " " " 15	55	65	65
25 " " " 20	60	70	70
30 " " " 25	60	70	70
35 " " " 30	70	80	80
40 " " " 35	70	80	80
45 " " " 40	70	80	80
50 " " " 45	70	80	80
55 " " " 50	80	90	90
60 " " " 55	80	90	90
65 " " " 60	80	90	90
70 " " " 65	80	90	90
75 " " " 70	90	100	100
80 " " " 75	90	100	100
85 " " " 80	90	100	100
90 " " " 85	90	100	100
95 " " " 99	100	110	110
100 " " " 95	100	110	110
110 " " " 100	100	110	110
120 " " " 110	110	120	120
130 " " " 120	110	120	120
140 " " " 130	120	130	130
150 " " " 140	120	130	130

Rate tables Distances.			1 & 2	3	4 & 5
160	Miles and Over	150	120	130	130
170	" " "	160	130	140	140
180	" " "	170	130	140	140
190	" " "	180	130	140	140
200	" " "	190	140	150	150
210	" " "	200	140	150	150
220	" " "	210	140	150	150
230	" " "	220	150	160	160
240	" " "	230	150	160	160
250	" " "	240	150	160	160
260	" " "	250	160	170	170
270	" " "	260	160	170	170
280	" " "	270	160	170	170
290	" " "	280	170	180	180
300	" " "	290	170	180	180
320	" " "	300	170	180	180
340	" " "	320	180	190	190
360	" " "	340	180	190	190
380	" " "	360	190	200	200
400	" " "	380	190	200	200
420	" " "	400	200	210	210
440	" " "	420	200	210	210
460	" " "	440	210	220	220

[fol. 97]

Appendix "B"

Classification of Railroads

Freight Tariff Class "A" Railroads:

The Alabama Great Southern R. R. Co.
Atlanta, Birmingham & Coast R. R. Co.
Atlantic Coast Line R. R. Co.
Atlanta & West Point R. R. Co.
Central of Georgia Rwy. Co.
Charleston & Western Carolina Rwy. Co.
Georgia Railroad.
Georgia, Southern & Florida Rwy. Co.
Lexington Terminal R. R. Co.
Louisville & Nashville R. R. Co.
Monroe Railroad Co.
Nashville, Chattanooga & St. Louis Rwy.
Seaboard Air Line Rwy. Co.
Southern Railway Co.

Freight Tariff Class "B" Railroads:

Bowdon Railway Company.
Collins & Glennville Railroad Co.
Elberton & Eastern Railroad Co.
Flint River & Northeastern R. R. Co.
Gainesville Midland Railway.
Gainesville & Northwestern Railroad Co. (G. A. Austin and Sidney Smith, Receivers).
Georgia and Florida Railroad.
Georgia, Ashburn, Sylvester & Camilla Ry. Co.
Georgia, Florida & Alabama Railway Company.
Georgia Northern Railway Company.
Georgia, Southwestern & Gulf R. R.
Greene County Railroad Company.
Hartwell Railway Company.
Lakeland Railway.
Louisville & Wadley Railroad Co.
Macon, Dublin & Savannah R. R. Co.
Milltown Air Line Rwy.
Millstead Railway.
St. Mary's Railroad.
Sandersville R. R. Co.
Savannah and Atlanta Railway (Charles E. Gay, Jr., Receiver).
Savannah and Statesboro Railway Co.
Shearwood Railway Company.
Smithonia and Dunlap R. R.
South Georgia Railway.
Statesboro Northern Railway.
Sylvania Central Railway Company.
Talbotton Railroad Company.
Tallulah Falls Railway Company (J. F. Gray, Receiver).
Tennessee, Alabama and Georgia R. R.
Union Point and White Plains R. R. Co.
Wadley Southern Railway Company.
Washington & Lincolnton R. R. Co.
Waycross and Southern R. R. Co.
Wrightsville & Tennille R. R. Co.

[fol. 98] EXHIBIT C TO BILL OF COMPLAINT

Order

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 4TH DAY OF JUNE, A. D. 1928

No. 17517

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

No. 17763

ROQUEMORE GRAVEL COMPANY et al.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al.

It appearing, That under date of January 21, 1927, the Commission issued a report and order in the above-entitled proceedings and in No. 17517 prescribed a reasonable basis of rates and minimum weights for the interstate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points in the State of Georgia, and between points in the State of Georgia and points in other states in Southern territory, except Florida, and that the said reasonable basis of rates and minimum weights was also prescribed in No. 17763 for the interstate transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia;

It further appearing, That in said report the Commission stated it did not deem it necessary to make any findings or enter any order in No. 17517 in so far as unjust discrimination against interstate commerce was there involved, as it was felt that the Georgia Public Service Com-
[fol. 99] mission would cooperate in authorizing such revision in the intrastate rates within Georgia as might be necessary to bring such rates into harmony with the interstate adjustment prescribed as aforesaid;

It further appearing, That a petition has now been filed on behalf of carriers respondent in No. 17517, operating

in the State of Georgia, in which it is averred that the Georgia Public Service Commission by order promulgated on the 13th day of March, 1928, effective the 1st day of May, 1928, required petitioners to establish rates on the aforesaid commodities within said State of Georgia which are not in harmony with, but are in many instances widely at variance with, and less than, the rates required to be established by this Commission for interstate traffic, and that said petitioners pray that this proceeding be reopened for further investigation;

It is ordered, That No. 17517 be, and it is hereby, reopened for further hearing on the sole question of whether or not the rates and minimum weights required by the Georgia Public Service Commission to be maintained by said respondent railroads on intrastate shipments of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in relation to the interstate rates and minimum weights prescribed as aforesaid causes, or will cause, any undue or unreasonable advantages, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

It is further ordered, That No. 17763 be reopened solely on the issue as to whether the intrastate rates and minimum weights maintained by defendants between points in Georgia on sand, gravel (washed or unwashed), clay gravel and crushed stone result in undue and unreasonable prejudice and disadvantage of complainants in No. 17763, [fol. 100] in shipping sand, gravel (washed or unwashed) and lay gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in the State of Georgia.

It is further ordered,

(1) That the State of Georgia be notified of these proceedings by sending copies of this order and of said petition, by registered mail, addressed to the Governor of the State of Georgia, at Atlanta, Ga., and to the Georgia Public Service Commission, at Atlanta, Ga.

(2) That notice of these proceedings be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

(3) That these proceedings be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 101] EXHIBIT D TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 17517[1]

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

Submitted October 28, 1929. Decided December 9, 1929

1. Upon further hearing in No. 17517, rates maintained by respondents on sand, gravel crushed stone and allied commodities, in carloads, for application within Georgia, found to be unduly prejudicial to interstate shippers, unduly preferential of intrastate shipppers, and unjustly discriminatory against interstate commerce.

2. Upon further hearing in No. 17763, undue prejudice to complainant at Montgomery, Ala., and undue preference of shippers between points in Georgia, found to result from the relation of interstate rates on sand and gravel, in straight or mixed carloads, from Montgomery to destinations in Georgia, and intrastate rates on sand, gravel, and crushed stone, in carloads, from points in Georgia to the same destinations.

3. Rates prescribed which will remove such preference prejudice and discrimination found to exist. Former reports, 122 I. C. C. 133; 140 I. C. C. 85.

Frank W. Gwathmey for Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Atlanta & West Point Railroad Company, Western Railway of Ala-

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[1]This report also embraces No. 17763, Roquemore Gravel Company, et al. v. Atlanta Birmingham & Atlantic Railway Company, et al., on further hearing.

[fol. 102] bama, Georgia Railroad, and Nashville, Chattanooga & St. Louis Railway; H. L. Walker for Southern Railway system lines; E. D. Mohr and Ben F. Morris for Louisville & Nashville Railroad Company; and John A. Streyer for American Short Line Railroad Association.

Charles E. Cotterill and M. H. Caskie for complainants in No. 17763; A. J. Ribe for Birmingham Slag Company and Montgomery Gravel Company; H. S. Angle for Dixie Sand & Gravel Company; Edwin Brooker for Atlanta Sand & Supply Company and Allon Sand Company; H. T. Youmans for Ellenton Gravel Company.

John S. Burchmore, Nuel D. Belnap, Luther M. Walter and S. J. Smith, Jr., for Georgia Public Service Commission; M. C. Moore for Mississippi Railroad Commission; Thomas J. Burke for South Carolina Highway Commission; Edgar Watkins, Watkins, Asbil & Watkins, Harry T. Moore, and E. H. Hart for State Highway Commission of Georgia, City of Atlanta, counties of Fulton and DeKalb, and other Georgia interests; J. Prince Webster for Consolidated Quarries, Inc., and Georgia Lime-Rock Company; Slaughter Linthicum and R. H. Cobb for Piedmont Corporation; and G. B. Graves pro se.

Report of the Commission on Further Hearing

LEWIS, Chairman:

Exceptions to the report proposed by the examiner were filed on behalf of the Georgia Public Service Commission and certain other Georgia interests, and oral argument was had. Our conclusions differ slightly from those proposed by him.

These proceedings now before us on further hearing present the sole question of whether the rates and minimum weights which respondent carriers are required to [fol. 103] maintain on sand, gravel, clay gravel, crushed stone, and slag, within Georgia under an order issued by the Georgia Public Service Commission on March 13, 1928, are unlawful in their relationship to the interstate rates and minimum weights which we prescribed as reasonable on the same commodities in the original report herein, 122 I. C. C. 133.

The original investigation in No. 17517 was instituted by us under section 13 of the interstate commerce act upon

petition of respondents operating in Georgia, to determine whether the rates which said respondents were then required by the Georgia commission to maintain on this traffic within Georgia resulted in undue preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or in unjust discrimination against interstate or foreign commerce; and, if so, what rates should be prescribed to cure the situation. All railroads operating in Georgia subject to our jurisdiction were there made respondents and the Governor of Georgia and the Georgia commission were given due notice.

The complainant in No. 17763 attacked, among other things, the rates on sand and gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia as being unreasonable and unduly prejudicial in favor of intrastate shippers of the same commodities and of crushed stone, between points in Georgia. This and various other complaints attacking the rates on these commodities from Montgomery and Chattanooga were heard and disposed of with No. 17517 on one record which was a comprehensive and voluminous one embracing a thorough presentation of the rate situation, and the transportation and other conditions pertaining to the movement of these commodities in the South.

As a result of this investigation, in our original report, 122 I. C. C. 133, decided January 21, 1927, we prescribed [fol. 104] in No. 17517 maximum reasonable interstate single-line and joint-line distance rates on sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, for application between points in the State of Georgia, and between points in the State of Georgia and points in other States in southern territory, except Florida. Certain so-called short or weak lines were authorized to charge an arbitrary of 25 cents per ton of 2,000 pounds in addition to the basic or standard-line rates, such arbitrary to accrue solely to the short line.

In the complaint cases we prescribed the same basis of rates on sand, gravel (washed or unwashed), and clay gravel from Montgomery and Chattanooga, and on slag from Birmingham and other slag-producing points in northern Alabama and from Copperhill, Tenn., to destina-

tions in Georgia and Mississippi.

The rates prescribed in these several proceedings will hereinafter be referred to as the 17517 scales. They are shown in the Appendix to this report.

Rates under the 17517 scales became effective October 1, 1927. In a subsequent decision in these cases on further hearing 140 I. C. C. 85, we prescribed the 17517 scales for application on like traffic to and from points in Florida south of the line of the Seaboard Air Line Railway from Jacksonville to River Junction, Fla., plus certain arbitraries for that part of the haul in Florida lying south of the said line. Those rates became effective August 2, 1928. As a result of our orders in these cases and subsequent voluntary extensions by the carriers the 17517 joint-line and single-line scales now apply on interstate traffic throughout most of southern territory, except between points in that portion embracing Mississippi and the western portions of Kentucky and Tennessee, and referred to as the Mississippi Valley. They apply on intrastate traffic within North Carolina and Alabama, and also within Kentucky and Tennessee except the western portions thereof.

[fol. 105] Discussing in the original report the then Georgia intrastate rate situation brought about by the order of the Georgia commission there considered, we stated at pages 169 and 170:

Considering the results brought about by this order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance scale of rates for application alike to the interstate transportation of all of the commodities here considered. There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any order in No. 17517 for the future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia commission will cooperate in authorizing

such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved.

Following the issuance of the original report the respondent carriers operating in Georgia filed their petition with the Georgia commission in which they requested that commission to authorize the establishment of the 17517 scales for intrastate application within Georgia. Hearings were had on this petition and thereafter, on March 13, 1928, the Georgia commission issued an order in which it refused to authorize the application of these scales within Georgia but directed the carriers to establish, on May 1, 1928, a different scale of rates. Those rates became effective within Georgia on May 1, 1928, as ordered.

Subsequently, the respondent carriers filed with us their supplemental petition setting forth, among other things, [fol. 106] that the aforesaid rates prescribed by the Georgia commission are not in harmony with, but in many instances vary widely from and are substantially lower than, the 17517 scales. Whereupon we reopened No. 17517 for further hearing for the sole purpose of determining whether the rates and minimum weights required by the aforesaid order of the Georgia commission to be maintained by said respondents on intrastate shipments within Georgia of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in relation to the interstate rates and minimum weights prescribed by us as aforesaid, cause, or will cause, any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

At the same time we reopened No. 17763 solely on the issue as to whether the intrastate rates and minimum weights maintained by defendants between points in Georgia on sand, gravel (washed or unwashed), clay gravel, and crushed stone result in undue and unreasonable prejudice and disadvantage of complainants in No. 17763, in shipping sand, gravel (washed or unwashed), and clay gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia.

The Governor of Georgia and the Georgia Public Service Commission were given due notice.

Various shippers of these commodities located outside of Georgia, as well as shippers of sand from Rollo and Allon, Ga., support the attack here made on the order of the Georgia commission. On the other hand, various producers and receivers within Georgia support the Georgia commission in the defense of its order.

It is urged, on behalf of the Georgia commission and other Georgia interests, that we are without jurisdiction [fol. 107] to here enter an affirmative order because of the limited scope of the order reopening these cases for further hearing. It is contended that the proceedings, should have been reopened also for the purpose of determining a reasonable basis of interstate rates.

As heretofore stated, the 17517 scales were recently prescribed in these proceedings for interstate application after an exhaustive investigation and are now applied on interstate traffic throughout the greater part of southern territory. The only reason that no findings were made for the future or order entered in the original proceedings concerning the Georgia intrastate rates was because this commission, desirous of fostering and encouraging the spirit of cooperation between it and the State commissions, "felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved." The Georgia commission has authorized a revision. Respondents and others complained and are here contending that this intrastate revision is so out of harmony with the approved interstate revision that it has brought about an unlawful relationship. For the purpose of determining whether or not this is the fact, the proceedings were reopened and the further hearing had. The scope of the further hearing was properly limited to the question indicated. If the contention made on behalf of the Georgia commission in this regard were sound, then our efforts to secure cooperative action in situations such as here presented instead of bringing about that result, could be made the instrument of burdening this commission with endless investigations covering the same subject matter and would result in litigation being prolonged indefinitely. The contention is without merit.

The order of the Georgia commission here in question prescribed rates for distances up to and including 460 miles. It prescribed two scales, one for application to both single-line and joint-line hauls between points within [fol. 108] Georgia located on standard or trunk lines, and the other for application between points on certain designated short or weak lines as well as between points on said short or weak lines and points on standard lines. The latter scale is uniformly 10 cents higher than the standard or trunk line scale. No joint-line arbitraries were allowed in any case.

Rates are herein stated in amounts per ton of 2,000 pounds.

The following table illustrates the differences between the standard-line 17517 scales which we prescribed and the standard-line scales prescribed by the Georgia commission:

	Single Line			Joint Line		
Miles	I. C. C. Docket 17517 Cents	Georgia Comm. order 3-13-28 Cents	Differences Cents	I. C. C. docket 17517 Cents	Georgia Comm. order 3-13-28 Cents	Differences Cents
10	50	50		65	50	—15
20	55	55		70	55	—15
30	60	60		75	60	—15
40	70	70		85	70	—15
50	80	70	—10	95	70	—25
60	80	80		95	80	—15
70	90	80	—10	105	80	—25
80	90	90		105	90	—15
90	100	90	—10	115	90	—25
100	100	100		115	100	—15
110	110	100	—10	125	100	—25
125	110	110		125	110	—15
130	120	110	—10	135	110	—25
150	120	120		135	120	—15
160	130	120	—10	140	120	—20
175	130	130		140	130	—10
190	135	130	— 5	145	130	—15
200	135	140	+ 5	145	140	— 5
220	140	140		150	140	—10
230	140	150	+10	150	150	
250	150	150		160	150	—10
260	150	160	+10	160	160	
280	160	160		170	160	—10
290	160	170	+10	170	170	
320	165	170	+ 5	175	170	— 5
360	175	180	+ 5	180	180	
400	185	190	+ 5	190	190	
440	195	200	+ 5	200	200	
460	205	210	+ 5	210	210	

—Georgia Public Service Commission Scale lower than 17517 scale.
+Georgia Public Service Commission Scale higher than 17517 scale.

[fol. 109] It will be noted that up to 200 miles the Georgia scale is, in some instances, the same as the 17517 single-line scale and in other instances the Georgia scale is less, generally by 10 cents. At 200 miles and beyond, the Georgia scale is in some cases the same as the 17517 single-line scale but is generally higher than the latter by amounts ranging from 5 to 10 cents. The Georgia scale is less than the 17517 joint-line scale by amounts ranging from 5 to 25 cents, except that for the longer hauls the two scales are the same in certain instances. The evidence indicates that practically all of the intrastate movements of this traffic within Georgia are less than 200 miles.

As has been noted, we authorized an arbitrary of 25 cents per ton over the 17517 standard line scales to the short or weak lines whereas the Georgia commission authorized an arbitrary of 10 cents.

The minimum carload weight prescribed in connection with the 17517 scales is 90 per cent of the marked capacity of the car except that where car is loaded to full visible capacity actual weight shall govern. The Georgia commission prescribed, in connection with its scales, a minimum weight of 80,000 pounds, excess in proportion, except that where a car of less than 80,000 pounds is furnished the marked capacity of the car shall be charged for.

The commodities under consideration are used chiefly in the building of highways and in concrete construction work. They are also used for railroad ballast. The original report contains a full discussion concerning points of production and chief points of consumption in the South, tonnage, and competition between producer. As there pointed out, the carriers in the South transport a vast tonnage of this traffic and derive therefrom a material part of their revenue. That there is keen competition between the respective producers and that interstate and intrastate shippers are in direct competition with each other is admitted by all. The producers in Alabama, Tennessee, and South [fol. 110] Carolina come in direct competition with producers in Georgia.

The Montgomery, Ala., district produces large quantities of sand and gravel. Sand and gravel are also produced at Chattanooga, Tenn., just north of the Georgia-Tennessee line. Much crushed stone, sand and gravel are produced

in the Carolinas. Illustrative points of production are Columbia, Steel Creek, and Ellenton, S. C., located about 80, 30, and 22 miles, respectively, from the Georgia State line. Slag, a by-product of iron and steel production, is produced chiefly in the Birmingham, Ala., district. The chief points of production of crushed stone in Georgia are located in the Stone Mountain and Lithonia districts near Atlanta. There are also quarries in the vicinity of Macon and in the northwestern part of the State of Graysville and Ladds. Sand is produced at such points as Rollo, Gaillard and in the Junction City district.

Exhibits were introduced by respondents showing the interstate rates from numerous representative shipping points to representative destinations in Goergia, which rates are on the basis of the 17517 scales; rates from representative Georgia origins to the same points, which are on the basis of the Georgia commission scale; and the amounts by which the said Georgia rates differ from the 17517 basis. The following data, taken from these exhibits and corrected to conform with our tariff check, are illustrative:

From	To	Miles	Interstate rates on basis of 17517 scales and in effect	Rates in effect from Ga. points shown on basis of Ga. Comm. order	Amounts by which rates between Ga. points shown are less than 17517 scales
Ellenton, S. C.	Cornelia, Ga.	171	140		
Holton, Ga.	" "	s157		120	10
Pacolet, S. C.	" "	s118	110		
Norris, Ga.	" "	127		110	25
Beverly, S. C.	Gainesville, Ga.	s 84	100		
Elberton, Ga.	" "	s 87		90	10
Hellams, S. C.	" "	112	125		
Norris, Ga.	" "	126		110	25
Chehaw, Ala.	Cartersville, Ga.	185	145		
Junction City, Ga.	" "	152		120	20
Chattanooga, Tenn.	" "	s 89	100		
Helmer, Ga.	" "	66		80	25
Columbia, S. C.	Athens, Ga.	161	140		
Fairmont, Ga.	" "	141		120	15
Montgomery, Ala.	Atlanta, Ga.	s176	135		
Junction City, Ga.	" "	s104		100	10
Montgomery, Ala.	Milledgeville, Ga.	226	150		
Ft. Gaines, Ga.	" "	s176		130	5
Birmingham, Ala.	Augusta, Ga.	337	180		
Georgetown, Ga.	" "	226		160	10

From	To	Miles	Interstate rates on basis of 17517 scales and in effect	Rates in effect from Ga. points shown on basis of Ga. Comm. order	Amounts by which rates between Ga. points shown are less than 17517 scales
Chehaw, Ala.	Macon, Ga.	153	140		
Fairmont, Ga.	" "	153		120	20
Montgomery, Ala.	Columbus, Ga.	s 95	100		
Georgetown, Ga.	" "	90		90	25
Birmingham, Ala.	" "	s159	130		
Holton, Ga.	" "	109		100	25
Chehaw, Ala.	Cordele, Ga.	148	140		
Lithonia, Ga.	" "	160		120	20
Ellenton, S. C.	Savannah, Ga.	103	125		
Norris, Ga.	" "	152		120	20
Montgomery, Ala.	Vidalia, Ga.	s258	150		
Ft. Gaines, Ga.	" "	189		130	15
Columbia, S. C.	" "	184	145		
Birmingham, Ala.	Quitman, Ga.	329	180		
Fairmont, Ga.	" "	312		180	5+
Montgomery, Ala.	Pelham, Ga.	183	145		
Norris, Ga.	" "	212		140	10
Montgomery, Ala.	Dawson, Ga.	s126	120		
Junction City, Ga.	" "	84		90	25

Copperhill, Tenn.	Newman, Ga.	159	140		
Norris, Ga.	" "	168		130	10
Birmingham, Ala.	Atlanta, Ga.	s167	130		
Dry Ridge, Ga.	" "	130		110	25

+ Georgia rate higher than 17517 scale.

s Single line.

* The present rate from Montgomery to Atlanta is $1.30. That rate is the 17517 single-line rate for 175 miles which distance was used by the respondents as being correct from Montgomery to Atlanta when this rate was established. At the further hearing respondents claimed, which claims was disputed by the Montgomery complainants, that a recalculation shows the correct distance between these points as 176 miles. The 17517 single-line scale rate for 176 miles is $1.35. However, it was stated on oral argument that the subsequent attempt made by respondents to increase this rate to $1.35 was enjoined by this District Court of Alabama.

[fol 112] Exhibits were introduced by respondents showing the rates from Gaillard, Junction City, Lumber City, Stockbridge and Lithonia to hundreds of points in Georgia located on various lines. These rates are on the basis of the Georgia commission's scale. They show that where the hauls are single-line the rates are in most instances on the basis of the 17517 single-line scale, although there are numerous instances where they are 10 cents under that scale. Where joint hauls are involved there are some instances where they are 5 cents less than the 17517 scale, but as a general rule they range from 10 to 25 cents less than that basis.

During the 4 months period ended April 30, 1928, 1,289 shipments of sand, gravel and crushed stone moved exclusively over the line of the Southern Railway between points in Georgia. That line also participated in the joint line movement of 3,111 shipments between Georgia points. The Georgia Southern & Florida Railway originated and delivered 124 and participated in the joint-line movement of 583 shipments moving between Georgia points. During the same period the entire Southern Railway System originated and delivered 12,817 shipments and participated in the joint movement of 14,977. These figures indicate a substantial joint-like movement of this traffic.

It was computed that the 17517 basis of rates, if applied to 2,342 carloads of this traffic which originated in Georgia on the Southern, including shipments received by that line from the Gainesville & Northwestern at Gainesville, Ga., during the 4-months period ended August 31, 1928, would have produced $12,000 more revenue than was produced by the application of the Georgia scale. This is equivalent to $36,000 computed on an annual basis.

This traffic is important to the Seaboard Air Line. During the year 1927 that line handled 5,213,183 tons of these materials which was equivalent to 25.5 per cent of its total tonnage for that period. The Seaboard has important pro- [fol 113] ducing points on its line in Georgia, for example, at Oglesby, Ladds and Portland, Ga.; and outside of Georgia, within competing range, at such points as Birmingham, Montgomery and Ragland, Ala.; and at Columbia and Samlaw, S. C. During the 5-months period ended May 31, 1928, the Seaboard handled 14,892 tons of slag from Alabama producing points to points in Georgia. These

slag shipments were charged the 17517 basis of rates and produced revenue amounting to $21,196. The application of the Georgia scale to this movement would have produced $617 less revenue.

During the 6-months period ended June 30, 1928, 23,096 tons of sand and gravel moved from Alabama producing points to Georgia destinations. Most of this tonnage moved from Montgomery. Charges were assessed on these shipments based on the 17517 scales and amounted to $32,778. The application of the Georgia scale to this movement would have produced $2,511 less revenue, or a decrease of 7.7 per cent. Duing the months of May, June, July and August, 1928, a period immediately succeeding the date when the Georgia scale became effective, 50,687 tons of crushed stone, sand and gravel originated at producing points in Georgia on the Seaboard and moved to destinations in Georgia. Charges were collected on these shipments based on the Georgia scale. Such charges were $7,307 less than they would have been if based on the 17517 scales. This is equivalent to about $22,000 computed on an annual basis.

The Georgia Railroad and the Atlanta & West Point are located entirely within the State of Georgia. There is a large interstate movement of this traffic from the Montgomery district over the Western Railway of Alabama in connection with the Atlanta & West Point. During the year 1927, the Georgia Railroad, Western Railway of Alabama and the Atlanta & West Point handled 507,753, 714,148 and 397,380 tons of these commodities which constituted 17.03, [fol. 114] 29.99 and 20.78 per cent of the total tonnage handled by each respectively during that period.

During the 4-months period ended August 31, 1928, 100,515 tons of these commodities originated on the Georgia Railroad and moved to points in Georgia. Charges were assessed on this movement based on the rates under the Georgia scale. They are shown to be $9,148 less than would have accrued on the basis of the 17517 scales. This is equivalent to approximately $27,500 computed on an annual basis.

Testimony of various Georgia producers shows that prior to the going into effect of the prescribed interstate basis of rates these Georgia producers shipped extensively into Alabama but that they are now marketing nearly all of their

production within Georgia. This indicates that the differences between the interstate and Georgia intrastate rates have brought about a diversion of much of this traffic from interstate to intrastate channels.

The Roquemore Gravel Company, complainant in No. 17763, produces sand and gravel in very large quantities at its plant at Montgomery. Testimony given for this complainant at the original hearing was to the effect that it endeavors to sell its product in as wide a territory as possible, including Georgia, and that in this endeavor it encounters actual or potential competition from producers of competing materials wherever located. The evidence produced at the further hearing shows that under normal conditions about 50 per cent of the movement from this complainant's plant is to Alabama points and about 25 per cent to Georgia points. Because of the highway and structural development taking place in Georgia that State is increasing in importance as a market for these materials. As previously stated, there is keen competition between the Georgia producers and those located outside that State. The Montgomery complainant maintains sales organizations at Atlanta and Albany, Ga., at an approximte cost of $20,000 [fol. 115] per year. Such agencies keep in close touch with construction programs in the State and aid in securing sales contracts for this complainant. As a general rule the distances from Montgomery to Georgia consuming points are greater than from Georgia producing points. In the past complainants' shipments to Georgia have been chiefly to Atlanta and points south thereof. Complainant now attempts, however, to market its products at all points in Georgia with the exceptions hereinafter noted.

It was testified that complainant has to absorb freight-rate differences to all points in central Georgia and that this is more or less the case at all points in Georgia where it now does business, the amounts of absorptions depending upon supply and demand. Complainant does not attempt to do business at northern Georgia points, as it is unable to compete with northern Georgia stone producers because of the amounts of freight rate differences. With equality of both interstate and intrastate rate levels, however, complainant expects to be able to compete throughout the entire State of Georgia.

A producer of clay gravel located at Ellenton, S. C., about 22 miles east of Augusta, Ga., testified that for many years in the past the bulk of his shipments has been made to Georgia destinations, chiefly to points in the coastal section; that various rate changes have had the effect of curtailing his Georgia business but that the effect of the Georgia intrastate rates established May 1, 1928, was to exclude him entirely from the Georgia markets; and that he has done no business in Georgia since that time. This producer mentioned certain orders which he had for Georgia business that were canceled when the Georgia rates became effective. To illustrate the rate differences, this witness compared the rates from Norris, Ga., a competitive clay gravel producing point, to various points in Georgia with rates from Ellenton to the same points. For example, the rate from Ellenton to Savannah, 103 miles, is $1.25, while the [fol. 116] rate from Norris to Ellenton, 152 miles, is $1.20. This shipper advocates uniformity in the intrastate and interstate rates.

The testimony of a producer of clay gravel at Steel Creek, S. C., 30 miles from the Georgia State line, was to the same general effect as that of the Ellenton producer.

A witness for a crushed stone producing plant located at Columbia, S. C., about 80 miles from the Georgia State line, testified that his plant has in the past made shipments to Georgia points, and continues to ship a small tonnage to Savannah. He cited Georgia destinations which are nearer Columbia than they are to various Georgia originating points but to which destinations the rates are higher from Columbia. This witness is interested in securing future business in Georgia and advocates the same level of rates for both interstate and intrastate application. A witness for complainant in No. 17763 with a sand and gravel plant at Chattanooga and close to the Tennessee-Georgia State line desires that the Georgia intrastate rates be harmonized with the present interstate rates. This witness stated he is now handicapped in shipping to Georgia by reason of the lower scale available to Georgia shippers.

In nine instances during 1927, when the Birmingham slag interests submitted bids for supplying material for different Georgia projects the Georgia producers were the successful bidders. At that time the average rate from the

plants of the successful Georgia bidders to the points of unloading was $1.03 for an average distance of 83 miles. Under the Georgia commission scale of May 1, 1928, the average rate between these points became 96 cents. Under 17517 basis it would be $1.15.

Sand is produced in large quantities at Junction City, Ga., and at various points within a few miles from that point. Junction City is located on the Atlanta, Birmingham & Coast and the Central of Georgia. However, there are no facilities for the interchange of traffic between these [fol. 117] lines at Junction City. Several of the producing points within the Junction City district are located on the Central of Georgia and within 2 to 4 miles from Junction City. Producers in the Junction City district ship chiefly to Atlanta, which is the chief market for this traffic in the South. The evidence indicates that the Junction City district shippers exert a strong influence in the control of sand prices in the Atlanta market. The short-line route from Junction City to Atlanta is via the Atlanta, Birmingham & Coast, 104 miles. The rate in effect under the Georgia scale for that distance is $1.00 while the rate under the 17517 scale would be $1.10. However, this $1.00 rate is also applied over the Central of Georgia to Atlanta from Junction City and other nearby shipping points on that line. The approximate average distance of such hauls is 164 miles and the 17517 single-line rate for that distance is $1.30. The evidence of record indicates that the application of the $1.00 rate from the Central of Georgia points was made at the suggestion of the Georgia commission. Moreover, this $1.00 rate is applied over various joint-line routes which enables the Junction City district shippers to secure deliveries at that rate at numerous points located on various lines in the Atlanta district. Under the 17517 joint-line scale the rates for these joint-line hauls would range from $1.30 to $1.40.

Sand is also produced in substantial quantities at Rollo and Allon, Ga. It is shipped from Gaillard, Ga., a nearby point located on the Southern. The chief market for these producers is also Atlanta and there is keen competition at this market between them and the Junction City district shippers. The short-line distance from Gaillard to Atlanta is over the Southern, 94 miles, and the rate is $1.00 under

the Georgia scale, the same as it would be under the 17517 single-line scale. The $1.00 rate applies only over the Southern. When delivery is made on a connecting line in Atlanta the Southern absorbs the switching charge to the [fol. 118] extent of $2.25 per car in order to meet competition from Junction City district points on the Central of Georgia. If the 17517 rates were applied from both Junction City and Gaillard to Atlanta the latter point would have a 10 cent lower rate than Junction City. The Gaillard shippers assert that it is unfair to group them with the Junction City shippers to Atlanta, as is done under the Georgia scale and that such grouping promotes unfair competition, and unjustly discriminates against them, which condition is further aggravated by the manner above noted in which the Georgia scale is applied from the Junction City district. They desire a basis of rates which will accord them the advantages to which their location entitles them. They urge the establishment of a uniform basis of rates for application to both intrastate and interstate traffic and counsel for these producers urges on brief that this uniformity should be here accomplished by placing the intrastate rates on the approved interstate level. It is argued that if the rates on this traffic within Georgia should here be permitted to continue on a lower level that the interstate basis the result will be to disrupt the entire rate situation in other southern States.

Respondents also urge with much force that we should consider not only the effect that a failure here to condemn the Georgia intrastate rates would have upon their revenue but also other results which would likely follow such action. Authorities of other southern States, they say, would naturally feel at liberty, in such an event, to promulgate other and different scales of intrastate rates on this traffic, the final result being that the general basis prescribed by this commission after an exhaustive investigation and much labor would be effectively whittled away and uniformity defeated.

The chief defense here offered for the action of the Georgia commission in failing to authorize the application of the 17517 scales within Georgia appears to rest on the [fol. 119] following grounds: (1) There are various producing plants in Georgia that are so located that many

destinations to which they ship or hope to ship are only reached by joint-line routes and it is desirable that such producing points should pay rates to such territory no higher than would Georgia plants having single-line hauls of approximately the same length to the same destinations in order to prevent discrimination between Georgia plants.

(2) That certain interstate shipping points would be able to reach various destinations in Georgia over single-line routes and at lower rates than could certain competing Georgia plants. Data were introduced to show such situations and the single-line mileage available within Georgia to certain Georgia producing plants as compared with the single-line mileage available within Georgia from Birmingham, Montgomery and Chattanooga. Many of the single-line routes shown from the interstate points are so circuitous that they would not be used.

(3) That it is not now the policy of the Georgia commission to authorize joint-line differentials.

(4) That the scale prescribed by the Georgia commission is reasonable and is better gradated than are the 17517 scales.

In the original report in these proceedings we gave careful consideration to the question of whether joint-line arbitraries should be prescribed on this traffic. Various cases were referred to in which we prescribed one scale for both single-line and joint-line application on higher grades of traffic, but after mature consideration, we there reached the conclusion that on this low grade traffic joint-line arbitraries should be prescribed. It might also be added that most of the interests represented there advocated the prescription of joint-line arbitraries. The fact is we have never prescribed for general application in any territory one scale for both single-line and joint-line hauls of this traffic. It is apparent that certain interstate shippers, due [fol. 120] to their location, are now able to ship to certain destinations over single-line routes and by reason of that fact have a rate advantage over other interstate shippers who are compelled to ship over two or more lines to the same points. Several of such instances appear of record. However, no interstate shippers are complaining of that situation. Such advantages are not undue.

Moreover, for the purpose of negativing the contention here made by the Georgia interests concerning the single-line mileage available from certain interstate points to destinations in Georgia, a witness for the Birmingham Slag Company introduced certain statements showing the extent to which the joint-line scale and the single-line scale apply from the principal interstate points to points in Georgia. It is shown that from Alabama City the joint-line scale would apply to 5683 miles within Georgia as compared with 1024 miles to which the single-line scales would apply. From Montgomery the ratio would be 4695 joint-line and 1980 single-line mileage, and from Birmingham 4581 joint-line and 2084 single-line.

It is here argued in connection with the matter set forth above as a defense for the action of the Georgia commission that we should not substitute our judgment for that of the Georgia commission in such matters.

While weight and respect should be given to orders of a State commission, its decisions are not controlling upon issues raised in cases before us. We are charged with various duties, among which is that to remove "any undue, unreasonable or unjust discrimination against interstate or foreign commerce." The real question here is whether the order of the Georgia commission, here considered has brought about an intrastate rate structure on this traffic within Georgia which, in its relationship to the approved interstate rate structure, has resulted and results in an unlawful situation which should be removed.

[fol. 121] The original report in these proceedings provided that in computing distances for the application of the 17517 scales the shortest routes shall be used over which carload traffic can be moved without transfer of lading. We meant by that provision, and the respondents so construed it, that the shortest single-line route over which carload traffic could be moved without transfer of lading should be used in connection with the single-line scale, and the shortest joint route over which carload traffic could be moved without transfer of lading should be used in connection with the joint-line scale.

In checking in rates under this formula the respondents found, of course, that the lowest rate between two points made in some instances over single-line routes while in other instances, the lowest rate made over joint-line routes.

In order that other routes might participate in the movement of this traffic between competitive points by meeting the rates of the rate-making route, we, upon application of respondent carriers, subsequently granted by appropriate fourth-section orders, certain relief from the provisions of the fourth section of the act. This relief authorized said respondents to maintain on this traffic from any point of origin to any point of destination within the scope of the proceeding the lowest rates applicable over any routes between the same points constructed on the basis prescribed in the report and to maintain higher rates, not exceeding the scale basis, from, to and between intermediate points. The fourth-section relief sought and granted was based on various considerations besides circuity. For instance, we had authorized joint-line differentials in these proceedings in consideration of the extra cost incurred by respondents in interchanging traffic from one to the other. It would have been impossible for joint-line carriers to have met competition of single-line routes and obtain these differentials without fourth-section relief. As stated in Memphis-Southwestern Investigation, 77 I. C. C. 473, 523, relief [fol. 122] sought in such situations "is not based upon the ground of circuity but upon the different circumstances and conditions in connection with joint-line hauls and the additional cost of service incident thereto."

The relief granted was, however, made subject to certain circuity limitations.

Much testimony and data were submitted on behalf of the Georgia commission and certain Georgia interests setting forth interstate rates applicable on this traffic over various routes between many points in this territory. This evidence is submitted to support the contention here made that carriers are maintaining numerous interstate rates on this traffic which are below the level of the 17517 scales. An examination of this data discloses that with few exceptions the instances given are simply where different routes are, under the authorized fourth-section relief above referred to, meeting at competitive points the rates set by the rate-making route, and applying at intermediate points the authorized scale basis. It readily can be understood that if this relief were not accorded, the rate-making route would secure all of the traffic between competitive points. It is our usual practice, subject to appropriate limitations, to

grant relief from the provisions of the fourth-section in such situations as here disclosed. In applying within Georgia the scale prescribed by the Georgia commission here in question, the carriers have the right, if they see fit, to meet at competitive points the rates maintained by the rate-making route. The argument here advanced that our findings and order require the maintenance over all routes between two given points of the rate established via the rate-making route is without merit.

The evidence in this case shows that with comparatively few exceptions, consideirng the extent of the territory covered, the carriers have checked in over the rate-making routes throughout the territory considered in the original proceedings interstate rates which are on the basis of the [fol. 123] 17517 standard-line scales. Carriers explain that the instances where such rates are off the approved basis are the result of errors which will be corrected.

There is some evidence to the effect that certain of the so-called short or weak lines named in the original report are not, due to competitive conditions, assessing the 25-cent arbitrary which we there gave them authority to charge in addition to the standard-line rates. Our findings and order herein, however, will automatically adjust themselves to situations where a short or weak line does or does not assess the arbitrary.

Summing up the situation, the evidence shows on the whole that the respondents and defendants, in publishing the interstate rates, have conformed to the thought which we had in mind when we prescribed these scales, which thought it embodied in the following expression found at page 148 of the original report:

While we shall not prescribe minimum rates, we shall prescribe a scale which takes fully into consideration the very low values of these commodities and all characteristics, transportation and otherwise, which entitle them to relatively low rates. It will be a scale, in our opinion, from which the carriers ought not to depart. Departures could only have the result, ultimately, of forcing an unwarranted reduction in the general rate level on these commodities which would be burdensome to other traffic.

It is also pointed out on behalf of the Georgia interests that there are many instances where the Georgia scale re-

sults in the same rates as would the 17517 scales. That situation only arises where the single-line rates for certain distances are the same under both scales. As stated by the United States Supreme Court in Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co., 257 U. S. 563, 579:

Any rule which would require specific proof of discrimination as to each fare or rate and its effect would completely block the remedial purpose of the statute.

[fol. 124] Upon brief filed in this proceeding on behalf of the Georgia commission it is stated:

The Georgia commission has not claimed, and is not here claiming that there should be a different basis of rates on intrastate commerce in Georgia than on interstate traffic into Georgia and out of Georgia or across Georgia. It is simply the position of the Georgia commission that the rates required to be maintained by its order and the rates now in effect within the State of Georgia are just and reasonable rates, sufficiently remunerative to the carriers, and not discriminatory against or prejudicial to interstate commerce or preferential to state shippers.

As heretofore stated, we found in the original report that there is no transportation reason for the maintenance of a basis of intrastate rates on these commodities within Georgia different from that there found reasonable for interstate transportation.

We find that the circumstances and conditions affecting intrastate transportation within Georgia and interstate transportation between points in Georgia, and from points in other States, in southern territory, except Florida, to points in Georgia, are substantially similar.

We further find that respondents' rates applicable to the intrastate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in carloads, between points in Georgia, to the extent that they are lower, distance considered, than the interstate rates contemporaneously applicable to the transportation of the same commodities between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore

found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities, in straight or mixed carloads, according as said respondents participate in said intrastate and said interstate transportation, [fol. 125] result and will result in undue preference and advantage of shippers and receivers of freight in intrastate commerce within the said State of Georgia and in undue prejudice to shippers and receivers of freight in interstate commerce between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in Georgia, and in unjust discrimination against interstate commerce.

We further find that said undue preference and undue prejudice and unjust discrimination can and should be removed by the establishment, maintenance and application to intrastate traffic between points in the State of Georgia of rates which shall not be lower, distance considered, than those contemporaneously applicable to the transportation of interstate traffic between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found reasonable in these proceedings for said interstate transportation.

We further find that the rates maintained and applied by defendants in No. 17763 to the intrastate transportation of sand, gravel (washed or unwashed), clay gravel and crushed stone, in carloads, from and to points of origin and destination in Georgia, to the extent that they are lower, distance considered, than the interstate rates contemporaneously applicable to the transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., to the same destinations in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found and prescribed as reasonable in No. 17763 for the interstate transportation by the said defendants of the said commodities from Montgomery, Ala., in straight or mixed carloads, according as said defendants participate in said intrastate and said interstate transportation, result [fol. 126] and will result in undue preference and advantage of intrastate shippers between points of origin and destination in Georgia and in undue prejudice and disad-

vantage to complainant Roquemore Gravel Company at Montgomery in shipping in interstate commerce to the same destinations in the State of Georgia.

We further find that said undue preference and advantage and undue prejudice and disadvantage can and should be removed by the establishment, maintenance and application by said defendants on the aforesaid intrastate traffic from points of origin in Georgia to destinations in the State of Georgia of rates which shall not be lower, distance considered, than those contemporaneously applied to the transportation of the aforesaid interstate traffic from Montgomery, Ala., to the same destinations in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found reasonable in these proceedings for said interstate transportation.

The evidence presented does not here justify a finding that the minimum weight prescribed by the Georgia commission results or will result in undue preference and advantage to Georgia shippers or in unjust discrimination against interstate commerce; nor does the record afford a sufficient basis for a finding of undue prejudice respecting the rates from Chattanooga.

An appropriate order will be entered.

Commissioners Aitchison and Campbell dissent.

[fol. 127] Order

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 9th Day of December, A. D. 1929

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

No. 17763

Roquemore Gravel Company, Alabama Sand & Gravel Company, and Dixie Sand & Gravel Company

v.

Atlanta, Birmingham & Atlantic Railway Company and B. L. Bugg, Receiver; Atlanta & West Point Railroad Company; Atlantic Coast Line Railroad Company, Central of Georgia Railway Company; Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia and Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile and Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company, Macon, Dublin & Savannah Railroad Company, Mississippi Central Railroad Company, Mobile & Ohio Railroad Company, The Nashville Chattanooga & St. Louis Railway, New Orleans Great Northern Railroad Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans & Northeastern Railroad Company, St. Louis-San Francisco Railway Company, Seaboard Air Line Railway Company, and The Western Railway of Alabama.

It appearing, That on January 21, 1927, the commission made and entered its report and orders in the above-entitled proceedings, and on March 5, 1928, made and filed its report and order on further hearing in No. 17517, and that by order entered June 4, 1928, these proceedings [fol. 128] were reopened for further hearing upon the questions stated in the aforesaid order of June 4, 1928;

It further appearing, That such further hearing has been had, and that the commission has, on the date hereof, made and filed a report on further hearing containing its further findings of fact and conclusions thereon, which said report and the aforesaid reports of January 21, 1927, and March 5, 1928, are hereby referred to and made parts hereof.

It is ordered, That the carriers respondent in No. 17517, namely, Alabama Great Southern Railroad Company, Albany Passenger Terminal Company, Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, Receiver; Atlanta Terminal Company, Atlantic Coast Line Railroad Company, Augusta Aiken Railway & Electric Corporation, Augusta Union Station Company, Augusta & Summerville Railroad Company, Atlanta & West Point Railroad Company, Arabia Granite Company, Bowden Railway Company, Central of Georgia Railway Company, Charleston & Western Carolina Railway Company, Chattahoochee Railway Company, Collins & Glenville Railroad Company, Elberton & Eastern Railroad Company, Flint River & Northeastern Railroad Company, Gainesville Midland Railway, Gordan C. Carson, Receiver; Gainesville Midland Railway, Wm. B. Veazey, Receiver; Georgia, Ashburn, Sylvester & Camilla Railway Company, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway, John Skelton Williams, Receiver; Georgia Northern Railway Company, Georgia Railroad, Georgia Southern & Florida Railway Company, Georgia, Southwestern & Gulf Railroad Company, Greene County Railroad Company, Hartwell Railway Company, Louisville & Nashville Railroad Company, Louisville & Wadley Railroad Company, Macon, Dublin & Savannah Railroad Company, Macon Terminal Company, Millstead Railroad Company, Milltown Air Line Railway, Nashville, Chattanooga & St. Louis Railway, Sandersville Railroad Company, Savannah & Atlanta Railway, Chas. E. Gay, Receiver; Savannah & Atlanta Rail-
[fol. 129] way, T. B. Felder, Receiver; Savannah River Terminal Company, Savannah & Statesboro Railway Company, Savannah Union Station Company, Seaboard Air Line Railway Company, Shearwood Company, South Georgia Railway Company, Southern Railway Company, Statesboro Northern Railway, St. Mary's Railroad Company, Stone Mountain Granite Corporation, Sylvania Central Company, Talbotton Railroad Company, Tallulah

Falls Railway Company, J. F. Gray, Receiver; Tennessee, Alabama & Georgia Railway, Tennessee Electric Power Company, Union Point & White Plains Railroad Company, Wadley Southern Railway Company, Washington & Lincolnton Railroad Company, Waycross & Southern Railroad Company, Waycross & Western Railroad Company, and Wrightsville & Tennille Railroad Company, according as they participate in the said intrastate and the said interstate transportation, be, and they are hereby, notified and required to cease and desist, on or before March 3, 1930, and thereafter to abstain from publishing, demanding, or collecting, for the transportation of the commodities defined in the next succeeding paragraph, from and to the points there designated, rates which do not conform to the requirements of said paragraph.

It is further ordered, That said respondents, according as they participate in the transportation as aforesaid, be, and they are hereby, notified and required to establish, on or before March 3, 1930, and thereafter to maintain and apply to the intrastate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in carloads, between points in the State of Georgia, rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities, in straight or mixed carloads, between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and hereto- [fol. 130] fore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities in straight or mixed carloads.

It is further ordered, That the above-named defendants in No. 17763, according as they participate in the said intrastate and the said interstate transportation, be, and they are hereby, notified and required to cease and desist on or before March 3, 1930, and thereafter to abstain from publishing, demanding, or collecting for the transportation of the commodities defined in the next succeeding paragraph, from and to the points there designated, rates which do not conform to the requirements of said paragraph.

It is further ordered, That said defendants, according as they participate in the transportation as aforesaid, be, and they are hereby, notified and required to establish, on or before March 3, 1930, and thereafter to maintain and apply to the intrastate transportation of sand, gravel (washed or unwashed), clay gravel and crushed stone, in carloads, from points in the State of Georgia to destinations in that State, rates which shall not be lower, distance considered, than the interstate rates contemporaneously maintained by said defendants on sand, gravel (washed or unwashed) and clay gravel, in straight or mixed carloads, from Montgomery, Ala., to the same destinations in Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found and prescribed as reasonable in No. 17763 for the interstate transportation by said defendants of the said commodities from Montgomery, Ala., in straight or mixed carloads.

It is further ordered, That the foregoing order shall continue in force and effect until the further order of the commission.

By the Commission.

George B. McGinty, Secretary. (Seal.)

Docket No. 17517.

[fol. 131] Appendix

Distance scales of rates prescribed in original report for interstate transportation by respondents in No. 17517, of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in straight or mixed carloads, between points in the State of Georgia, and between points in the State of Georgia and points in other States in southern territory, except Florida; and also prescribed for interstate application by defendants in No. 17763, and by defendants in certain other complaints, on sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia and Mississippi:

Table A

Distance Scales for Interstate Application Over Standard or Trunk Lines

Rates are in cents per net ton, as follows:

Distance	Single-line rate, Cents	Joint-line rate, Cents
10 miles and under	50	65
20 miles and over 10	55	70
30 miles and over 20	60	75
40 miles and over 30	70	85
60 miles and over 40	80	95
80 miles and over 60	90	105
100 miles and over 80	100	115
125 miles and over 100	110	125
150 miles and over 125	120	135
175 miles and over 150	130	140
200 miles and over 175	135	145
230 miles and over 200	140	150
260 miles and over 230	150	160
290 miles and over 260	160	170
320 miles and over 290	165	175
360 miles and over 320	175	180
400 miles and over 360	185	190
440 miles and over 400	195	200
480 miles and over 440	205	210
520 miles and over 480	215	215
560 miles and over 520	225	225
600 miles and over 560	235	235
640 miles and over 600	245	245
680 miles and over 640	255	255
720 miles and over 680	265	265
760 miles and over 720	275	275
800 miles and over 760	285	285

[fol. 132]

Table B

When the transportation is in whole or in part over either of the so-called short lines shown in Appendix B to the original report rates are to be determined as follows:

Apply the rates under appropriate scale or scales above set forth in Table A, plus the following arbitrary which is to accrue solely to the short line: Arbitrary, 25 cents per net ton.

[fol. 133] EXHIBIT E TO BILL OF COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

Docket No. 17763

ROQUEMORE GRAVEL COMPANY et al.

vs.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al.

Petition by Georgia Public Service Commission for Rehearing, etc.

The Georgia Public Service Commission, by its chairman and undersigned counsel, respectfully represents:

I

The report of the Interstate Commerce Commission in the above entitled proceedings on further hearing, entered December 9, 1929, and the order based thereon, are erroneous in law, contrary to and not supported by the evidence, and should be vacated and set aside.

II

The aforesaid report and the aforesaid order of December 9, 1929, of which the Commission's previous reports entered herein under date of December 21, 1927, and March 5, 1928, are made a part, are not clear, definite and free from ambiguity. Your petitioner is unable to determine with certainty from the text of the aforesaid order what rates for the interstate and intrastate transportation of the

[fol. 134] materials in question within the State of Georgia and in surrounding territories the respondents are required by the order to maintain, as specific rates, as maximum rates, or as minimum rates.

III

The statutes of the State of Georgia regulating the railroads which are respondents herein as to their intrastate transportation and rates, provide certain methods for publishing and maintaining lawful schedules of such rates for such intrastate transportation; and the state law and the regulations and practices thereunder are not the same as, or analogous to, section 6 of the Interstate Commerce Act and the Commission's regulations and the practices thereunder.

It is not clear from the aforesaid order and decisions of this Commission herein as to the manner and form in which the respondents are required to publish and maintain or to evidence the publication and maintenance of such rates for intrastate transportation contemplated by the Commission's decision. It is important to the shippers and receivers of freight in the State of Georgia, to the producers, consumers and users of these materials, and to the Georgia Public Service Commission that there shall be certainty as to the legal rates in effect and maintained within the State of Georgia. That there may be no uncertainty, it is essential to know where and in what manner the legal rates are to be published hereafter under the Commission's order. Petitioner therefore inquires whether it is the expectation of this Commission that the respondents will comply with the aforesaid order, or as the same may be later amended, by publishing and filing with the Interstate Commerce Commission at Washington, schedules intended to show the legal rates for intrastate transportation in Georgia, independently of the requirements of the statutes of said state.

[fol. 135] Your petitioner is unable to accept and approve any schedules which may be tendered to it for acceptance and approval by any of the respondents herein for the intrastate transportation of these materials in Georgia which violate the terms of the Georgia Public Service Commission's outstanding orders presently in effect, including its

order of March 13, 1928, in the proceeding known as No. 16384.

IV

The aforesaid order of the Commission entered December 9, 1929, requires the respondents to cease and desist on or before March 3, 1930, and thereafter to abstain from publishing, demanding or collecting for the transportation of sand, gravel, etc., in intrastate commerce between points in the State of Georgia, any rates which do not conform to the requirements of the order. The said order affirmatively requires the respondents to establish on or before said date and thereafter to maintain and apply to the aforesaid intrastate transportation of said materials between points in Georgia—

"Rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities * * *, not exceeding the rates set forth in the appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities * * *".

Your petitioner presumes that this portion of the aforesaid order is intended to require respondents to establish and charge on intrastate movements in Georgia: (a) rates which are no lower, distance considered, than the rates which the respondents contemporaneously apply to interstate transportation; and (b) rates no higher than set forth in the appendix to said report. Under such interpretation, however, the order is indefinite, uncertain, and invalid; and [fol. 136] if that is not the true construction, it should be made clear by additions or amendments.

(a) As to the rates which respondents apply to interstate transportation: The respondents, severally and collectively, apply to the interstate transportation of these materials in Georgia territory, varying rates for the same distances and they do not now adhere to any scale of rates for the distances transported over the actual routes of movement. As to which of these varying rates contemporaneously applied by respondents to the actual interstate transportation are to be accepted and used as the measure

to which the state rates for comparable distances must conform is not stated in the report or definitely ascertainable. Is it then really intended that the respondents shall establish, on intrastate movements in Georgia, rates which are no lower, distance considered, than the maximum scale of rates which govern the shortest physical routes that might be used (and in some cases are used for some of the traffic), in interstate movement? That is to say, shall the interstate rates which have been prescribed as maximum for the shortest interstate routes but are actually applied over the longer interstate routes, be imposed as minimum rates in Georgia? If so, the Georgia Commission would be enjoined from requiring certain respondents to charge for certain distances in Georgia, rates of the same measure which the Commission permits them to continue charging on interstate traffic for the same actual distances.

(b) As to the rates set forth in the appendix to said report: It will be observed that the appendix does not define or prescribe the formula by which the scales of rates therein set forth are to be applied. This omission is embarrassing because, as your petitioner interprets the respective reports of December 21, 1927, and of December 9, 1929, there is a conflict between them, which we think should be removed and the orders clarified by specific statement of the mileage formula in the appendx to the [fol. 137] order of December 9, 1929. The original report on page 166 in setting forth the so-called mileage scales, prescribes the formula by which those scales are to be applied and governed. This formula enforces the use, over the routes which transport the traffic, of a rate ascertained by use of the distance over the shortest route by which carload traffic can be transported without transfer of loading. This is interpreted on mimeograph sheet 13 of the report of December 9, 1929, as follows:

"We meant by that provision, and the respondents so construed it, that the shortest single-line route over which carload traffic could be moved without transfer of lading should be used in connection with the single-line scale, and the shortest joint route over which carload traffic could be moved without transfer of lading should be used in connection with the joint-line scale."

That much of the interpretation is clear and is accepted by your petitioner. But after taking the single-line scale and distance and the joint-line scale and distance, what use is made of them in respect of the rates actually published by the respective carriers over their several routes? The report then continues:

"In checking in rates under this formula the respondents found, of course, that the lowest rate between two points made in some instances over single-line routes while in other instances, the lowest rate made over joint-line routes."

That fact is also true, that the use of the single-line scale against the single-line mileage would sometimes make lower, and the use of the joint-line scale against joint-line mileage would sometimes make lower, between given points of origin and destination. But the report does not state whether the Commission was undertaking to prescribe the rate from a given point of origin over the single-line route or over all routes by which the traffic actually was transported. Were the carriers free, as this interpretation would suggest, to charge over any route by which they [fol. 138] transport interstate traffic, the scale rate for the actual distance over that route? The quick answer would be affirmative; and that answer is implied in the ensuing sentence in the interpretation on sheet 13 of the report of December 9, 1929, reading as follows:

"In order that other routes might participate in the movement of this traffic between competitive points by meeting the rates of the rate making route, we, upon application of respondent carriers, subsequently granted, by appropriate fourth section orders, certain relief from the provisions of the fourth section of the Act."

But the answer in the affirmative to our question, namely, the statement that the carriers between a given point of origin and destination were privileged by the Commission's decision and order of December 21, 1927, to charge the actual scale rate for the actual distance over their route, single-line or joint-line, as the case may be, is directly contradictory and in violation of the express language of the aforesaid report of December 21, 1927, page 166:

"In computing distances for the application of the foregoing rates, we find that the shortest routes shall be used over which carload traffic can be moved without transfer of lading."

For illustration that the interpretation is erroneous (on sheet 13 of the report of December 9, 1929), of the letter of the findings and order of December 21, 1927, as entered, and that it is not the interpretation placed on the report by the carriers, we refer to the rates and routes from Montgomery, Alabama, to Augusta, Georgia: The shortest single-line route from Mongomery to Augusta is the Central of Georgia Railroad, 362 miles, which moves a great volume of materials. Did the Commission prescribe the maximum rate over that route, and if so, in what amount? We think it prescribed 175 cents per net ton under the language of page 166 of the decision of December 21, 1927. The Central of Georgia, has published and now maintains [fol. 139] 175 cents. There is a shorter route, however, of 317 miles from Montgomery to Augusta which would short-haul the Central of Georgia and which is not used, namely, Seaboard Air Line as initial carrier to Hurtsboro, Central of Georgia, as intermediate carrier, to Macon, and Georgia Railroad as delivering line. The joint-line scale applied to this distance makes 175 cents but that route would be objectionable also to the initial carrier in it, the Seaboard Air Line, because it would short-haul that carrier which undoubtedly would prefer to and does haul the traffic to Vidalia where it joins the Georgia & Florida Railroad, a relief line for which the weak line arbitrates were authorized in the report of December 21, 1927. If the Commission's order prescribed a rate from Montgomery to Augusta, by what route was this rate prescribed, and is it fair to consider that the other routes which published the same rates did so voluntarily and not because they were required so to do by the terms of the order?

We ask leave to present the following illustrations of the difficulty of interpreting the Commission's aforesaid order of December 9, 1929, by reason of its incompleteness and uncertainty. These are not presented as catch propositions but as typical cases from actual producing points involving the actual routes of movement, as well as the so-called southern class rate formula routes.

For illustration, from Stockbridge, Georgia, to Brunswick, Georgia, an intrastate route over the Southern Railway, the single-line distance is 256 miles, which is the shortest rail distance between those two points. The present rate actually in force over the Southern Railway is 160 cents per net ton, which is the maximum rate prescribed in the Georgia Commission's order of March 13, 1928. The single-line rate for that distance shown in the appendix to the Commission's order of December 9, 1929, is 150 cents per net ton. Does the report require or contemplate that the Southern Railway must reduce said rate for said intrastate transportation? If so, by what authority?

[fol. 140] Again, the interstate rate of the Atlantic Coast Line Railroad from Montgomery, Alabama, to Camilla, Georgia, a one-line haul of 244 miles, is 140 cents per net ton. That is the shortest single-line route from Montgomery to Camilla and there is a considerable movement over that route under the 140 cent rate. The rate for that distance under the appendix to the Commission's order of December 9, 1929, is 150 cents per net ton. On the other hand, within the State of Georgia, over the Atlantic Coast Line Railroad from Saffold, Georgia, to Fleming, Georgia, the actual distance is 244 miles, being also the short-line, and the present rate is 150 cents per net ton which is the maximum rate for that distance fixed by the Georgia Commission's aforesaid order of March 13, 1927. If, however, the Atlantic Coast Line Railroad is to comply with our interpretation of the order of December 9, 1929, is it to reduce its intrastate rate from Saffold to Fleming, 244 miles, to 140 cents per ton, because that is the rate which it is contemporaneously applying interstate for its single-line haul of 244 miles from Montgomery to Albany? If so, by what authority is such reduction in said Georgia intrastate rate? If not, why should the state rate exceed the interstate rate of the same railroad for the same distance?

The foregoing illustrations deal with single line rates maintained by the same carrier state and interstate. If one respondent charges a certain rate for a certain distance for interstate transportation, does the order of December 9, 1929, contemplate that other respondents shall maintain a corresponding rate for the same distances on their intrastate movements in Georgia, or is each respond-

ent simply required to maintain intrastate the same basis which it maintains interstate?

With respect to joint hauls: From Anniston, Alabama, to Atlanta, Georgia, the Lousiville & Nashville Railroad in connection with the Seaboard Air Line maintain a through route over which traffic moves freely, the distance [fol. 141] being 115 miles. The joint-line scale under the appendix to the order of December 9, 1929, for that distance, is 125 cents per net ton, but the said defendants maintain a rate for said interstate transportation of 110 cents per net ton. Does the order of December 9, 1929, require that the Louisville & Nashville and Seaboard Air Line, for intrastate transportation over joint-line routes within Georgia, shall charge more than their said interstate rate of 110 cents for said distance, or, in other words, does it require that they shall charge within Georgia the full rate of 125 cents prescribed as maximum for that distance in the appendix to the order of December 9, 1929? That is, what rates are said respondents required by said order to maintain for said distance in Georgia? For instance, from Elberton, Georgia, on the Seaboard Air Line, to Round Oak, Georgia, a joint-line distance of 112 miles, the present rate is 110 cents, being the Georgia Commission maximum rate for that distance under its order of March 13, 1928. Are these carriers to be required to charge 125 cents because that is the maximum rate for that distance under the appendix attached to the order of December 9, 1929, notwithstanding the joint rate of 110 cents now in effect for that distance from Anniston to Atlanta and notwithstanding the order of the Georgia Commission?

The Georgia, Southern & Florida Railroad is generally regarded as a part of the Southern Railway system. The Georgia Public Service Commission, however, is under restraint of a decision of the United States District Court for the Northern District of Georgia, preventing the enforcement as to intrastate traffic, upon the Georgia Southern & Florida Railroad, of a single line basis of rates with the Southern Railway. The decree was entered May 8, 1923, on the petition of the carrier. Georgia, Southern & Florida Railway Company, et al., v. Georgia Public Service Commission, et al., 289 Fed. Rep. 878. The record herein shows that the Southern Railway is voluntarily maintain-

[fol. 142] ing interstate rates on sand, gravel, etc., from Alabama points on its lines to destinations on the Georgia, Southern & Florida Railroad under the Commission's single line scale. The record in these proceedings does not contain a showing of facts as to whether, and from what point of view, the Georgia, Southern & Florida Railroad may be considered or ought to be treated as one line with the Southern Railway for purposes of applying sand and gravel rates under this Commission's decision herein. What rates are to be established and maintained under the Commission's order of December 9, 1929, for the intrastate movement of these materials in Georgia between points on the Georgia, Southern & Florida Railroad and points on the Southern Railway?

As a specific illustration, from Stockbridge, Georgia, to Cordele, Georgia, the distance is 134 miles via Southern Railway, in connection with Georgia, Southern & Florida. The present rate is 120 cents per net ton, which is the maximum rate under the Georgia Commission's order for that distance. This is also the single line rate under the appendix to the Commission's order of December 9, 1929. But the joint line rate for that distance under said order is 135 cents per net ton. Does the Commission's order supersede the decree of the court, and if so, we wonder upon what evidence it is though to rest.

The decision of December 9, 1929, refers on sheet 6 to the arbitraries over the so-called standard line scales authorized to so-called weak lines. The appendix to the order of December 9, 1929, provides in Table B for an arbitrary to the short lines or weak lines of 25 cents per net ton. One of the so-called weak lines or short lines in Georgia named in the Commission's original decision, 122 I. C. C., at page 175, is the Georgia & Florida Railroad. Another is the Wrightsville & Tennille Railroad. Neither of these railroads is now charging in its interstate rates any arbitrary over and above the so-called standard line basis. Does [fol. 143] the report require that they shall do so as to intrastate movements?

Specifically, take the Georgia & Florida Railroad. The published rate from Birmingham, Alabama, to stations on this railroad, Cottle, Georgia, to Sparks, Georgia, inclusive, is 175 cents per ton for distances ranging from 384 miles

to 392 miles. The maximum rate authorized by the scale printed as appendix to the order of December 9, 1929, for these distances, is 215 cents per ton, including the weak line arbitrary. What rates or what basis of rates shall be charged intrastate in Georgia to and from points on this and other so-called relief lines?

On sheet 14 of the tentative report, it is stated that the findings and order will automatically adjust themselves to situations where a short or weak line does or does not assess the arbitrary. The petitioner would like a definition of this automatic adjustment.

V

The present interstate schedules of the respondents for transportation of these materials in Georgia territory contain innumerable violations of the so-called long-and-short-haul clause of section 4 of the Act, and in particular contain many violations of the so-called circuity rule in said section. While the Interstate Commerce Act does not primarily relate to intrastate transportation, it may be pertinent to point out that in the present proceedings the Commission apparently undertakes to prescribe the specific basis of rates to be applied on intrastate transportation within the State of Georgia, and to such effort the language of paragraph (1) of section 4 appears to be applicable. This is to say, paragraph (1) of section 4 is not restricted in its terms to apply only to interstate transportation and if the Commission undertakes to fix the reasonable and proper rates for intrastate transportation under other sections of [fol. 144] the Act, it would appear that the provisions of the long-and-short-haul clause should attach thereto.

The aforesaid order of December 9, 1929, as interpreted by petitioner, will necessarily create violations of the aforesaid long-and-short-haul rule in the state rates in Georgia and violations of the circuity clause therein.

VI

It may be that the carriers may feel confident of the proper interpretation to be placed on the Commission's aforesaid order of December 9, 1929, and they may be willing to undertake their compliance therewith, notwithstand-

ing the provisions of the statutes of the State of Georgia regulating railroad transportation and rates within that state. If the respondents are willing to undertake compliance with said order without further interpretation or clarification thereof, or if this Honorable Commission is disposed to delegate to the carriers the working out of a complete schedule of intrastate rates ostensibly in harmony with the interstate schedules and without the aid or co-operation of the Georgia Public Service Commission, which has not been sought, nevertheless, your petitioner represents that the new schedules which the respondents may thereupon prepare may be found to contain and your petitioner believes they will contain (a) many rates for intrastate transportation in Georgia which are actually higher than the respondents are actually charging for interstate transportation for the same distances; (b) many rates for intrastate transportation for shorter distances that are greater than the rates for longer distances, over the same lines in the same direction, the shorter being included within the longer, in contravention of the long-and-short-haul rule; (c) many rates which are reduced only by ostensible authority of the order of the Interstate Commerce Commission, to bases lower than the full maximum rates heretofore [fol. 145] authorized by the Georgia Public Service Commission, and create thereby preference and discrimination as between different shippers and receivers of freight located within the State of Georgia; that is to say, by reducing certain state rates, this Commission will have created discriminations and preferences among state shippers.

Before the establishment of new schedules of intrastate rates should be permitted against the statutes of the State of Georgia and the regulations of the Georgia Public Service Commission thereunder, your petitioner respectfully submits that it is desirable that the Interstate Commerce Commission shall afford your petitioner an opportunity to criticize, or to indicate its acceptance or approval of, said new schedules of intrastate rates. Therefore, and predicated on the premises stated in this paragraph, your petitioner presents the suggestion set forth in numbered paragraph 2 of the prayer of this petition.

VII

The petitioner undertook at the hearings in this investigation before Examiner E. H. Waters, to present by competent witnesses all of the pertinent facts permitted under the restricted scope of the investigation, as the issues were defined by the Commission and its Examiner; and counsel for your petitioner undertook on brief and on argument to submit all of the general objections of law and propositions of fact which they, as the servants of your petitioner, were able to develop for the information and aid of this Commission in deciding this investigation.

Unless and until the Commission is willing to hear proper and competent evidence to show that the present existing rates for the transportation aforesaid within the State of Georgia are just and reasonable and sufficient rates, fully compensatory to the carriers for the services performed thereunder, that the rates apparently contemplated by its [fol. 146] order of December 9, 1929, would be unreasonable and respecting the reasonable level of interstate rates for transportation of said materials within territory including and contiguous to the State of Georgia, for the future from and after March 3, 1930, there is no further information that your petitioner desires to lay before the Commission.

VIII

The petitioner makes the following particular assignments of error against the Commission's aforesaid report and order of December 9, 1929:

(a) The Commission was without jurisdiction to enter the report and order and in effect to nullify or set aside the orders of the Georgia Public Service Commission prescribing maximum reasonable rates within said state, on the record as made, because of the limitations thereof and the refusal and failure of the Commission to receive evidence as to the reasonable level of said intrastate rates and as to the reasonable and proper level of interstate rates, for the future from and after the date when its orders are to become effective.

(b) The burden of proof is upon the respondent carriers in these proceedings, under section 15 of the Act, in as much as they relate to rates proposed to be advanced after January 1, 1910. This burden of proof has not been met by the carriers and was not imposed on the carriers by the Commission; and the record does not justify or support the advances in rates approved by the report and order.

(c) The report and order are erroneous because there is no basis of record for finding that the rates for the transportation of the materials in question made or imposed by authority of the State of Georgia, or any of said rates, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and in-[fol. 147] terstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, or any burden upon interstate or foreign commerce.

(d) The report and order are erroneous because there is no basis for finding that the rates for the transportation of the materials in question actually charged by the respondents on intrastate traffic within the State of Georgia, or any of said rates cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, or any burden upon interstate or foreign commerce.

(e) The report and order are erroneous because the record on which they were entered does not show the transportation conditions, or th circumstances and conditions under which the materials actually are transported for the respective intrastate movements within the State of Georgia and does not therefore give a basis for determining the similarity or dissimilarity of the actual services under said intrastate rates, on the one hand, and under the interstate rates from and to points in other states, on the other hand.

(f) The report and order are erroneous because the Commission therein undertakes to require reductions in intrastate rates within the State of Georgia which are wholly beyond the jurisdiction of said Commission to reduce.

(g) The report and order are erroneous because the changes in intrastate rates therein required create unjust discriminations and tend to create undue preferences as among different and competing shippers and producers of said materials in Georgia, in violation of the statutes of the State of Georgia governing such intrastate transportation.

[fol. 148] (h) The report and order are erroneous because they would create violations of the principle of the long-and-short-haul provisions of section 4 of the Interstate Commerce Act. That is to say, rates will be published by the respondents if they comply with the letter of the aforesaid report and order, for the transportation of the said materials within the State of Georgia which will be higher for shorter distances than for longer distances over the same lines in the same direction, the shorter being included within the longer.

(i) The report and order are erroneous because they in effect undertake to substitute for the terms of the lawful order of the Georgia Public Service Commission prescribing maximum rates within said state, the terms of a formula devised by the Interstate Commerce Commission to govern as maximum the interstate rates. The Commission has no power to prescribe rate formulas as distinguished from maximum rates and minimum rates.

(j) The report and order are erroneous because they contemplate that rates for actual services of transportation over actual routes of movement shall be made with regard to fictitious mileage, that is to say, with regard to mileages over other routes that are not used and which could not be opened as through routes by this Commission without violation of the law, as defined by the Supreme Court in the so-called Subiaco case, 278 U. S. 269.

(k) The report and order are erroneous because in violation of the constitutional rights of the State of Georgia to regulate the rates for commerce within its borders.

(l) The report and order are erroneous because in effect they enjoin the Georgia Public Service Commission from requiring carriers within its borders to publish and maintain intrastate rates for given distances which are the same as the carriers are now charging for the same or comparable distances on their interstate traffic.

[fol. 149] (m) The report and order are not supported by evidence and are contrary to the manifest weight of the evidence in these proceedings.

(n) The report and order are unlawful and invalid for other and manifest errors of law and of fact.

Prayer

Wherefore the Georgia Public Service Commission respectfully prays:

I

That the Commission will vacate and set aside its aforesaid report and order entered December 9, 1929, which are erroneous in law, not supported by the record, and beyond the jurisdiction of the Commission; and that thereupon the Commission will discontinue the proceeding and will enter an order of dismissal thereof.

II

That if a rehearing is not granted and the aforesaid report and order are not vacated or modified, then that the Commission will enter its further order forthwith requiring the respondents severally and collectively to submit to the Commission and to the parties on or before a date certain, their suggested schedules of intrastate rates for the transportation aforesaid, which the respondents propose to establish in compliance with the Commission's decision, and that leave be granted to the petitioner and to other parties to the proceeding within twenty days or such other time as the Commission may consider reasonable, to present their specific objections and exceptions to said proposed schedules of intrastate rates, pointing out wherein they may be in violation of the terms of the Commission's order, or improperly related to the existing interstate rates or, vio- [fol. 150] lative of the long-and-short-haul principle, or otherwise contrary to the provisions of the law and to ac-

cepted principles of rate making, and that the effective date of the order of December 9, 1929, may be postponed for these purposes.

Dated at Atlanta, Georgia, this 11th day of January, 1929. Respectfully submitted.

Georgia Public Service Commission, by James A. Perry, Chairman. Luther M. Walter, Nuel D. Belnap, John S. Burchmore, Attorneys for Georgia Public Service Commission, Respondent. S. J. Smith, Special Attorney. Walter, Burchmore & Belnap, 1522 First Nat'l Bank Bldg., Chicago.

[File endorsement omitted.]

[fol. 151] IN UNITED STATES DISTRICT COURT

ORDER TO SHOW CAUSE, ETC.—Filed Feb. 20, 1930

At Chambers, February 19, 1930

Let the petition in the above styled cause be filed. Let notice be given the United States by mailing a copy to the Attorney General, and the Interstate Commerce Commission by mailing a copy to its Secretary; and said defendants are required to show cause before the court composed as required by the statutes of the United States, at Chambers, New Orleans, Louisiana, on the 27 day of February, 1930, why a temporary restraining order and an interlocutory injunction shall not be issued.

It is further ordered that at such hearing testimony may be presented by affidavit.

Sam'l H. Sibley, United States District Judge, Northern District of Georgia.

[fol. 152] IN UNITED STATES DISTRICT COURT

ANSWER OF THE UNITED STATES OF AMERICA—Filed Feb. 27, 1930

United States, one of the defendants in the above entitled case, for answer to the bill of complaint heretofore filed therein, answers and says:

I.

United States admits for the purposes of this suit the allegations of the opening paragraph and paragraphs I to IX, both inclusive, of the bill of complaint.

Further and affirmatively answering the allegations contained in said paragraph VI, United States says that as alleged in said paragraph the first report and order of the Interstate Commerce Commission expressly stated that the Commission did not

> * * * deem it necessary to make any finding or enter any order in No. 17617 for the future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved.

in its "Report of the Commission On Further Hearing" that Commission did find that the intrastate rates on the commodities therein mentioned within the State of Georgia were unduly preferential to intrastate shippers, unduly prejudicial to interstate shippers, and resulted in an unjust discrimination against interstate commerce, as is shown in said Report On Further Hearing, Exhibit D, pages 126-127 of the bill of complaint.

II

Answering paragraph X of the complaint, United States admits that further hearing was held as therein alleged at which further testimony was received from the various parties to the hearing, including the petitioners in this suit, and denies the remaining allegations and conclusions contained in that paragraph.

[fol. 153] III

For answer to paragraphs XI and XII of the complaint, United States admits that the Commission made and rendered the reports and orders referred to in those paragraphs, but respectfully refers the Court to said reports, Exhibit [illegible] to the complaint, and 140 I. C. C. 85, respectively, for full and complete statement and information

concerning what the Commission found and required therein.

IV

United States admits the allegations of paragraph XIII and XIV of the bill of complaint.

V

For answer to paragraph numbered XV of the bill of complaint, United States says that it is without sufficient knowledge of the things therein alleged to form a belief thereon, and, therefore, neither admits nor denies said allegations.

VI

United States denies each and all of the things and conclusions alleged in paragraph numbered XIV of the bill of complaint, and further and expressly denies that the order of the Interstate Commerce Commission is arbitrary, unreasonable or otherwise unlawful for the reasons in that paragraph alleged or any of them.

Wherefore, having fully answered, United States prays that the relief sought be denied and the bill of complaint dismissed with costs to petitioners.

Elmer B. Collins, Special Assistant to the Attorney General. John Lord O'Brian, The Assistant to the Attorney General. Clint W. Hager, United State Attorney.

[fol. 154] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 155] In United States District Court

Answer of Interstate Commerce Commission—Filed Feb. 27, 1930

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the bill of complaint

contained, for answer thereunto, or unto so much or such parts thereof, as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I, II, IV, V, VIII, XIII and XIV of the bill of complaint, the Commission admits that the allegations therein contained are true.

II

Answering paragraphs III, VI, VII, IX to XII, inclusive, XV and XVI of the bill of complaint, the Commission admits and alleges that it made and entered the order dated October 5, 1925, referred to in paragraph III, in a proceeding then pending before it entitled "Rates on Chert, Clay, Sand, and Gravel within State of Georgia, which embraced Dockets Nos. 17517 and 17763; that it made and entered the report and order dated January 21, 1927, referred to in paragraph VI of the bill of complaint, and made a part thereof as Exhibit A; that it made and entered the report and order dated December 21, 1927, referred to in paragraph XII of the bill of complaint; that it made and entered the report and order dated December 9, 1929, referred to in paragraphs XI and XIII of the bill of complaint, and made a part thereof as Exhibit D.

The Commission further alleges that said reports and orders of January 21, 1927, December 21, 1927, and December 9, 1929, were duly served upon the parties therein named; that said reports and orders were made and entered [fol. 156] in the proceedings filed in the Commission's office and numbered as aforesaid 17517; that prior to making, entering and serving as aforesaid said reports and orders of January 21, 1927, December 21, 1927, and December 9, 1929, the Commission accorded to all parties to said proceedings, including the complaints herein, at hearings in said proceedings, a full and fair opportunity to be heard upon all subject matters covered by the aforesaid reports and orders; that at said hearings a large volume of testimony and other evidence bearing upon said matters was submitted to the Commission for consideration on behalf of said parties, including the complainants herein, by their respective counsel; that at said hearings and subse-

quently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination, on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made and entered said reports and orders of January 21 and December 21, 1927, and December 9, 1929, which reports and orders included the Commission's decision, conclusions, orders, and requirements in the rpemises; and that upon the evidence aforesaid and as shown in and by said reports and orders of January 21 and December 21, 1927, and December 9, 1929, the Commission made the findings, stated the conclusions, and prescribed the rules and regulations, and terms and conditions upon which said orders are based.

The Commission further alleges that said findings, conclusions, rules and regulations, and terms and conditions were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceedings as aforesaid, and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

Further answering paragraphs VI, IX and XII of the bill of complaint, the Commission respectfully refers the [fol. 157] court to the orders, and reports and orders, therein referred to for its requirements in the premises.

Further answering paragraph X of the bill of complaint, the Commission denies that material and competent evidence which was tendered by complainants was refused by the examiner and denies that incompetent, irrelevant, and immaterial evidence offered by the carriers was received by the examiner to the prejudice of said complainants.

Further answering paragraph XVI of the bill of complaint, the Commission denies that its reports and orders mentioned therein are, or that any of them is, either arbitrary, or unreasonable, or erroneous, or invalid, or unlawful for the reasons, or for any of the reasons stated in said paragraph, or for any other reason.

The Commission further alleges that, in making said reports and orders of January 21 and December 21, 1927, and December 9, 1929, it considered and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings, by their respective

counsel, including all matters covered by the material allegations of the bill of complaint herein.

The Commission further alleges that said orders of January 21 and December 21, 1927, and December 9, 1929, were not made and entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein or with either the statements or con-
[fol. 158] clusions of fact included in said reports and orders of January 21 and December 21, 1927, and December 9, 1929, which reports and orders are hereby referred to and made a part of this answer.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that the bill of complaint herein be dismissed.

Interstate Commerce Commission, by E. M. Reidy, Attorney. Daniel W. Knowlton, of Counsel.

[fol. 159] *Duly sworn to by Ernest I. Lewis. Jurat omitted in printing.*

[fol. 160] IN UNITED STATES DISTRICT COURT

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Now come Atlantic Coast Line Railroad Company, a corporation under the laws of the State of Virginia, Louisville & Nashville Railroad Company, a corporation under the laws of the State of Kentucky, Atlanta & West Point Railroad Company, a corporation under the laws of the State of Georgia, Atlantic Coast Line Railroad Company and Louisville & Nashville Railroad Company, as Lessees of the Georgia Railroad, Seaboard Air Line Railway Company, a corporation under the laws of the State of Virginia, and Atlanta, Birmingham & Coast Railroad Com-

pany, intervenors in this cause, and respectfully aver that each of them is a common carrier by railroad, engaged in the carriage of each and all of the commodities involved in this cause, in interstate commerce in the State of Georgia and as well in intrastate commerce in said State.

Intervenors file this their joint and several answer to the bill of the Georgia Public Service Commission and of the Commissioners thereof, and for answer say:

1

Intervenors admit the allegations of paragraph one (1) of the bill. These intervenors allege that neither Georgia Public Service Commission nor its Commissioners have any pecuniary interest in the subject matter involved in this cause.

2

Intervenors admit the allegations of paragraph two (2) of the bill.

3

Intervenors admit that on the 5th day of October, 1925, the Interstate Commerce Commission entered an order in a proceeding then pending before it entitled "Rates on chert, clay, sand and gravel within the State of Georgia". The scope of that order will be determined by its own terms. [fol. 161] Intervenors admit that all railroads operating in Georgia, subject to the jurisdiction of the Interstate Commerce Commission, were made respondents to this said proceeding, and the Governor of Georgia and the Georgia Public Service Commission were given due notice thereof.

4

Intervenors admit the allegations of paragraph four (4) of the bill.

5

Intervenors admit the allegations of paragraph five (5) of the bill.

6

Intervenors admit that the Commission entered its report dated January 21, 1927, and also entered its formal order of the same date. Said report and order were en-

titled in No. 17517 and No. 17763. The said report and order are set out in the bill as Exhibit "A" thereto. The remaining portion of paragraph six (6) of the bill is denied. The Interstate Commission did not find that the Georgia Commission's rates were non-discriminatory as to the rates prescribed by the Interstate Commission in its aforesaid order of January 2, 1927, but on the other hand clearly intimated that they were discriminatory against said rates. The Interstate Commission then withheld its order for the correction of such discrimination out of courtesy to the Georgia Commission.

7

Intervenors admit that the Georgia Public Service Commission entered an order dated February 25, 1925, effective April 1, 1925.

8

Intervenors admit that the Georgia Public Service Commission, on the 13th of March, 1928, entered its further order in reference to the transportation of the commodities effected, a copy of which is attached to the bill marked Exhibit "B".

[fol. 162]

9

Intervenors admit that the original proceedings were reopened by order of the Interstate Commission entered on the 4th day of June, 1928. Copy of said order of reopening is set out as Exhibit "C" to the bill, and is limited as is therein specifically stated.

10

Thereafter the matter was further heard before Examiner Waters and extensive evidence was taken. Intervenors deny that any material and competent evidence, offered by the complainants in this case, was refused by the examiner, and that incompetent, irrelevant and immaterial evidence was received; and also deny that the complainants were prejudiced by any of the rulings therein referred to.

11

The Commission, after proceeding in the regular and lawful way, rendered its report and order dated December

9, 1929, copy of which is attached to the bill as Exhibit "D". The said order was made after long hearings, after the taking of voluminous evidence, after having received briefs of counsel, after having heard oral argument, and after the evidence, briefs and oral argument had been carefully and fully considered. Intervenors allege that the said order of the Commission was amply supported in every material part thereof by substantial evidence. They further allege that the evidence so legally offered and received not only justified but required the finding rendered in this cause by the Commission.

12

Intervenors allege that no allegation contained in this paragraph of said bill has any effect upon the validity of the order of the Commission which is complained of in this cause.

13

Intervenors allege that it is true that the Georgia Public Service Commission did file with the Commission a mo- [fol. 163] tion for rehearing, copy of which is attached to the bill and marked Exhibit "E". The said exhibit is referred to for a statement of its contents.

14

Intervenors admit the allegations of paragraph fourteen (14) of the bill.

15

Intervenors allege that the rates fixed by the order of the Interstate Commerce Commission, entered on the 9th day of December, 1929, set out as Exhibit "D" to the bill, will be the only rates in effect governing the transportation within its terms after the effective date thereof; that it is their purpose to apply those rates as they are required to do by law so long as those rates are the lawful rates.

16

Intervenors deny each and every allegation of fact and each and every conclusion of law contained in paragraph sixteen (16) of complainant's bill.

Intervenors allege that heretofore and on or about the 29th of January, 1930, and more than thirty days prior to March 3, 1930, intervenors, through their agent, J. H. Glenn, tendered to the Georgia Public Service Commission for filing their Supplement No. 8 to I. C. C. No. A 716, being a Supplement to Freight Tariff No. 33A and being local and joint freight and distance tariff applying on commodities between points in the State of Georgia. The purpose of said tariff was to make effective on March 3, 1930, the rates on sand, gravel (washed or unwashed), clay gravel, crushed stone and slag which had been prescribed by the Interstate Commerce Commission in its order of December 9, 1929, copy of which is set out in the bill beginning at page 129 thereof. The said rates affected by the said supplement were applicable only to intrastate traffic, i. e., traffic having [fol. 164] origin, destination and entire transportation in the State of Georgia; the said rates being those fixed by the Interstate Commerce Commission and being identical with the rates for the same transportation published in interstate tariffs and filed with the Interstate Commerce Commission.

On February 13, 1930, Mr. E. M. Price, Rate Expert for the Georgia Public Service Commission, acting in his official capacity for the said Commission, rejected the aforementioned suppelment No. 8 and returned the same with the following notation thereon, to-wit:

"This schedule is in violation of Order in Docket 16384 of Georgia Public Service Commission, entered March 1?, 1928, and is unlawful. It is, therefore, rejected and returned."

Intervenors pray that the bill of Complainants be dismissed.

Alston, Alston, Foster & Moise, Wm. H. Sibley, Attys. for Intervenors.

[fol. 165] *Duly sworn to by R. J. Doss. Jurat omitted in printing.*

[fol. 166] IN UNITED STATES DISTRICT COURT

ANSWER OF INTERVENORS—Filed Feb. 27, 1930

Come now The Alabama Great Southern Railroad Company, a corporation under the laws of the State of Alabama, Georgia Southern and Florida Railway Company, a corporation under the laws of the State of Georgia, and Southern Railway Company, a corporation under the laws of the State of Virginia, interveners in this cause, and respectfully allege that each of them is a common carrier by railroad engaged in the carriage of each and all of the commodities involved in this proceeding in intrastate commerce in the State of Georgia, as well as interstate commerce into said State.

Interveners file this their joint and several answer to the bill of the Georgia Public Service Commission and the members thereof, and for answer say:

I

Interveners admit the allegations of Paragraph I of the bill.

II

Interveners admit the allegations of Paragraph II of the bill.

III

Interveners admit that on the 5th day of October, 1925, the Interstate Commerce Commission entered an order instituting a proceeding and inquiry entitled "Rates on Chert, Clay, Sand and Gravel Within the State of Georgia." The scope of that order will be determined by its own terms. Interveners admit that all railroads operating in Georgia, subject to the jurisdiction of the Interstate Commerce Commission, were made respondents in said proceeding and that the Governor of Georgia and the Georgia Public Service Commission were given due notice thereof.

IV

Interveners admit the allegations of Paragraph IV of the bill.

[fol. 167]

V

Interveners admit the allegations of Paragraph V of the bill.

VI

Interveners admit that the Interstate Commerce Commission rendered its report dated January 21, 1927 and that it also entered its formal order on the same date. The said report and order are set out in the bill as Exhibit "A" thereto.

The other allegations contained in Paragraph VI of the bill are denied. The Interstate Commerce Commission did not find that the rates theretofore prescribed and made effective in Georgia by the Georgia Public Service Commission were nondiscriminatory as alleged in Paragraph VI of the bill, but on the other hand indicated that such rates were discriminatory and unduly prejudicial as compared with the interstate rates prescribed by the Commission in its report and order of January 21, 1927. The Interstate Commerce Commission made no order with respect to the intrastate rates in Georgia, but withheld an order in order to give the Georgia Public Service Commission an opportunity to fix and prescribe intrastate rates in the State of Georgia which would be free from undue prejudice and unjust discrimination against interstate commerce and against persons and localities shipping in interstate commerce into the State of Georgia.

VII

Answering Paragraph VII of the bill, interveners admit that the Georgia Public Service Commission entered an order dated February 25, 1925 which, under its terms, became effective on April 1, 1925.

VIII

Answering Paragraph VIII of the bill, interveners admit that the Georgia Public Service Commission entered its further order on the 13th day of March, 1928, with reference to the transportation of the commodities involved, a copy of which said order is attached to the bill as Exhibit "B".

[fol. 168]

IX

Unterveners admit that the original proceedings before the Interstate Commerce Commission were reopened by that Commission under its order dated June 4, 1928. A copy of said order is attached to the bill as Exhibit "C" and is limited as specifically stated and provided in said order.

X

Answering Paragraph X of the bill, interveners allege that the matter was further heard before Examiner Waters of the Interstate Commerce Commission on the 26, 27 and 28 of December 1928, and that extensive evidence was taken. They deny that any material and competent evidence offered by the complainants in this case was refused by the Examiner, and they also deny that incompetent, irrelevent and immaterial evidence was received; they further deny that the complainants were prejudiced in any manner whatsoever by any of the rulings therein referred to.

Answering Paragraph XI of the bill, interveners assert that the Interstate Commerce Commission, after proceeding in the regular and lawful way, rendered its report and order dated December 9, 1929, a copy of which is attached to the bill as Exhibit "D". Said order was made after extensive hearings, after the taking of voluminous testimony, after briefs were filed with that Commission by counsel, after a tentative report was issued by the Examiner and all parties afforded an opportunity to file exceptions thereto, after the Commission had heard oral argument, and after the evidence, briefs, exceptions to the Examiner's tentative report and oral argument had been considered and weighed carefully. Interveners allege that the said order of the Interstate Commerce Commission was amply supported in every part thereof by substantial evidence and that the evidence so legally offered and received not only justify but require the findings rendered in this cause by the Interstate Commerce Commission.

[fol. 169]

XII

Interveners allege that no allegation contained in this paragraph of the bill has any effect upon the validity of the order of the Interstate Commerce Commission which is complained of in this cause.

XIII

Interveners allege that it is true that the Georgia Public Service Commission filed with the Interstate Commerce Commission a motion for rehearing, a copy of which is attached to the bill and marked Exhibit "E".

XIV

Interveners admit the allegations of Paragraph XIV of the bill.

XV

Interveners allege that the rates fixed by the order of the Interstate Commerce Commission entered on the 9th day of December, 1929, set out as Exhibit "D" to the bill, will be the only rates in effect governing the transportation with its terms after the effective date thereof, to wit; March 3, 1930; that it is their purpose to apply these rates as they are required to do by law so long as the aforesaid order of the Interstate Commerce Commission of December 9, 1929 remains in full force and effect.

XVI

Interveners deny each and every allegation of fact and each and every conclusion of law contained in Paragraph XVI of complainant's bill.

XVII

Interveners allege that heretofore and on or about the 29th of January, 1930, and more than thirty days prior to March 3, 1930, interveners, through their agent, J. H. Glenn, tendered to the Georgia Public Service Commission for filing their Supplement No. 8 to I. C. C. No. A 716, being a Supplement to Freight Tariff No. 33-A and being local and joint freight and distance tariff applying on com-

[fol. 170] modities between points in the State of Georgia.

The purpose of said tariff was to make effective on March 3, 1930, the rates on sand, gravel (washed or unwashed), clay gravel, crushed stone and slag which had been prescribed by the Interstate Commerce Commission in its order of December 9, 1929, copy of which is set out in the bill beginning at page 129 thereof. The said rates affected by the said supplement were applicable only to intrastate traffic, i. e., traffic origin, destination and entire transportation in the State of Georgia; the said rates being those fixed by the Interstate Commerce Commission and being identical with the rates for the same transportation published in interstate tariffs and filed with the Interstate Commerce Commission.

On February 13, 1930, Mr. E. M. Price, Rate Expert for the Georgia Public Service Commission, acting in his official capacity for the said Commission, rejected the aforementioned supplement No. 8 and returned the same with the following notation thereon, to-wit:

"This schedule is in violation of Order in Docket 16384 of Georgia Public Service Commission, entered March 13, 1928, and is unlawful. It is, therefore, rejected and returned."

The aforesaid tariff has been filed with and received by the Interstate Commerce Commission and the rates published therein are in strict conformity with the order of the Interstate Commerce Commission entered on December 9, 1929.

Except as herein expressly admitted, interveners deny each and all of the allegations contained in the bill of complaint.

Wherefore interveners pray that the bill in this cause be dismissed.

Sanders McDaniel, W. N. McGehee, Attorneys for the Interveners, The Alabama Great Southern Railroad Company, Georgia Southern and Florida Railway Company, Southern Railway Company.

[fol. 171] *Duly sworn to by L. V. Crane. Jurat omitted in printing.*

[fol. 172] In United States District Court for the Northern District of Georgia, Atlanta Division

No. 656. In Equity

Bill of Complaint

To the Honorable the Judges of the District Court of the United States for the Northern District of Georgia, Atlanta Division:

The petition of State Highway Board of Georgia, Commissioners of Roads and Revenues of Fulton County, City of Atlanta, Brown Brothers, Georgia Gravel Company, Central of Georgia Sand Company, and C. W. Moore, complaining of the United States of America, the Interstate Commerce Commission, The Gainesville and Northwestern Railroad Company (G. A. Austin and Sidney Smith, Receivers), Atlanta, Birmingham & Coast Railroad Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Georgia Railroad, Georgia Southern and Florida Railway Company, Louisville and Nashville Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Seaboard Air Line Railway Company, and Southern Railway Company, respectfully shows:

I

Petitioner State Highway Board of Georgia is an agency of the State of Georgia, with power to sue and be sued, engaged in the construction of highways within the State of Georgia for the use of said State and the people thereof; Commissioners of Roads and Revenues of Fulton County, Georgia, are: Paul S. Ethridge, Chairman, W. L. Gilbert, Walter C. Hendrix, Edward H. Inman, and Walter B. Stewart. These have authority to and are engaged in the [fol. 173] construction of roads in the County of Fulton, in the State of Georgia; City of Atlanta, a municipality duly and legally chartered under the laws of the State of Georgia, with its residence in the County of Fulton, said State, and which city constructs and improves streets therein. All the foregoing petitioners use the commodities described in the above styled petition and the rates on such commodities affect the prices thereof, and each and all of

the foregoing named petitioners are directly interested in the intrastate rates thereon in the State of Georgia.

II

Brown Brothers, of Howard, Taylor County, Georgia, a citizen and resident of the State of Georgia; Georgia Gravel Company, a citizen of Columbus, in the County of Muscogee, State of Georgia; Central of Georgia Sand Company, a citizen of the County of Taylor, in the State of Georgia, both of which are corporations duly and legally organized under the laws of the State of Georgia; and C. W. Moore, a citizen and resident of Junction City, in the County of Talbot, State of Georgia. All of the petitioners named in this paragraph are engaged in the production of sand and gravel and are directly interested in the rates within the State of Georgia that are paid thereon, such rates materially affecting the business of each of the petitioners named in this paragraph.

III

All of the petitioners hereto, named in paragraphs I and II hereof, were parties to the proceedings before the Interstate Commerce Commission, copies of which are attached hereto.

IV

Petitioners further show that the defendant railroads named hereinbefore are railroads serving petitioners in the [fol. 174] shipments of the commodities here involved and are doing business within the State of Georgia, and were parties to the proceedings here sought to be reviewed and to the order here sought to be set aside and annulled. That such railroad defendants, to-wit: on the 29th of January, 1930, issued a local, joint freight and distance tariff, being Supplement No. 8 to Freight Tariff No. 33-A, in which tariff said defendant railroads and other roads not material to the rights of petitioners herein sought to make effective on the 3rd day of March, 1930 the rates prescribed by the Interstate Commerce Commission in its order in Docket No. 17517, and unless enjoined defendants will make effective on the 3rd of March, 1930 said freight tariff affecting the rates of petitioners, increasing some and decreasing some. The said schedules if and when so estab-

lished or applied will violate the statutes of the State of Georgia and the constitution of said state governing transportation by railroad in intrastate commerce in said state.

V

This suit is brought to enjoin, set aside, annul, and suspend certain orders of the Interstate Commerce Commission and is instituted under the provisions of the Urgent Deficiency Appropriations Act, approved October 22, 1913 (38 Stat. L., 219; Chap. 32), and petitioners invoke the jurisdiction of this court under the provisions of said Act and of the so-called Commerce Court Act (36 Stat. L., 539), and of Section 207 of the Judicial Code.

Defendant, United States of America, is made such by virtue of the provisions of the aforesaid acts. The defendant, Interstate Commerce Commission, is an administrative tribunal created by Act of Congress, approved February 4, 1887 (24 Stat. L., 379), as later amended (hereinafter referred to as the Interstate Commerce Act), whose duties and powers are defined in such Act and in Acts amendatory thereof and supplemental thereto.

[fol. 175] VI

Heretofore, on, to-wit, the 5th day of October, 1925, the said Interstate Commerce Commission entered an order which instituted a proceeding of inquiry upon petition filed in that behalf by Atlantic Coast Line Railroad Company and others (the said petitioners being common carriers engaged in the transportation of property by railroad in interstate commerce and as such subject to the Interstate Commerce Act. The purpose of said proceeding of inquiry was stated in said order, namely, to determine whether the then existing carload rates on sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in carloads (either and all of said materials are for convenience referred to hereafter by the term sand and gravel, etc.), required by an order theretofore entered by Georgia Public Service Commission, under date of February 25, 1925, to be maintained by said Atlantic Coast Line Railroad Company and others for intrastate movements of said materials between points in Georgia resulted in any undue or unreasonable advantage, preference, or prejudice, as between

persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or in any undue, unreasonable, or unjust discrimination against interstate or foregin commerce; and if so, what rates or what maximum rates, or minimum rates, or maximum and minimum rates, should be prescribed to be charged to cure the situation. All railroads operating in the State of Georgia subject to the jurisdiction of the Interstate Commerce Commission were made respondents to this said proceeding, and the Governor of Georgia and the Georgia Public Service Commission were given due notice thereof. The said investigation was assigned Docket No. 17517.

VII

Thereafter, after hearing, following briefs and oral argument, the Interstate Commerce Commission entered its [fol. 176] report dated January 21, 1927, reported in Volume 122 of I. C. C. Reports, at pages 133 to 176, inclusive, and its formal order dated January 21, 1927, entitled in No. 17517 and in No. 17763, and in other proceedings consolidated therewith. The said report and order prescribe certain bases of rates, as maximum rates, to govern the interstate transportation of sand and gravel, etc., between points in the State of Georgia and points in other states in southern territory, as defined therein. The report and order contain no findings against intrastate rates maintained or charged within the State of Georgia, and state that the order of the Georgia Public Service Commission which had been entered February 25, 1925, could not be found to have brought about a rate situation which had in the past been unjustly discriminatory against interstate commerce. A copy of the aforesaid report and order of January 21, 1927 is attached hereto, marked as Exhibit A, and made a part hereof.

VIII

Theretofore, Georgia Public Service Commission, pursuant to its statutory duties, had entered its order dated February 25, 1925, and effective April 1, 1925, wherein said Commission had approved a general revision of rates on sand and gravel, etc., between points in the State of Geor-

gia, by railroad, over all of the railroads in said state, in intrastate commerce.

IX

Thereafter, following the Interstate Commerce Commission's report and order of January 21, 1927, Exhibit A hereto, Georgia Public Service Commission entered its further order dated the 13th of March, 1928, prescribing maximum rates for the intrastate transportation of sand and gravel, etc., over all of the railroads in the State of Georgia. A copy of said order is attaches hereto as Exhibit B, and made a part hereof.

[fol. 177]

X

Thereafter, the Interstate Commerce Commission entered its further order dated the 4th day of June, 1928, reopening the said proceedings for further hearing and investigation in respect of certain issues only, that is to say for the sole purpose of determining whether the rates and minimum weights required by the aforesaid order of the Georgia Public Service Commission to be maintained by aforesaid railroad companies respondents therein, on intrastate shipments within Georgia, of sand and gravel, etc., in relation to the interstate rates and minimum weights prescribed by the Interstate Commerce Commission, will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce. A copy of the said order of June 4, 1928, is attached hereto as Exhibit C, and made a part hereof.

XI

Thereupon, the matter was heard further at Atlanta before the aforesaid Examiner Waters, duly appointed and qualified as aforesaid, on, to-wit, the 26th, 27th, and 28th days of December, 1928. At said hearing further testimony was received from various parties to the hearing, including petitioners and Georgia Public Service Commission; and there was offered in evidence on the hearing referred to

testimony seeking to prove that the rates intrastate in Georgia violate sections 3 and 13 of the Act to Regulate Commerce in that they were unduly preferential to shippers in Georgia and unduly prejudicial of interstate shippers. Such evidence was objected to and is here now objected to because by the orders as shown in the allegations of the original complaint the interstate rates were not open [fol. 178] for investigation and all evidence which assumed that such interstate rates were just and reasonable was unauthorized.

XII

Thereafter, the Interstate Commerce Commission entered its supplemental report and order dated December 9, 1929, and reported in Volume 160, I. C. C. Reports, at page 309. A copy of said report and order is attached hereto as Exhibit D, and made a part hereof. The Interstate Commerce Commission therein undertakes to require the respondent railroad companies to establish on or before March 3, 1930, and thereafter to maintain and continue in force and effect indefinitely, until the further order of said Commission, and to apply to the intrastate transportation of sand and gravel, etc., between points in the State of Georgia, rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities, not exceeding the rates set forth in the appendix to the order; and the appendix sets forth distance scales of rates to be applied according to a certain formula as set forth in the report, not governed by the mileage over the actual routes over which the transportation is performed.

XIII

Following the Interstate Commerce Commission's aforesaid report and order of December 9, 1929, Exhibit D hereto, Georgia Public Service Commission filed with said Interstate Commerce Commission a petition for rehearing wherein various assignments of error were made against the Commission's aforesaid report and order of December 9, 1929, with the prayer that the same should be vacated and set aside and other relief was prayed, as set forth in said petition. A copy of the aforesaid petition is attached hereto as Exhibit E, and made a part hereof.

[fol. 179]

XIV

The aforesaid petition for rehearing by Georgia Public Service Commission, Exhibit E hereto, was denied by the Interstate Commerce Commission in order entered the 3rd day of February, 1930.

XV

Therefore, having exhausted their efforts and remedies under the Interstate Commerce Act, and with the Interstate Commerce Commission, your petitioners herein respectfully institute this proceeding for the purpose of annulling and setting aside the aforesaid reports and orders of the Interstate Commerce Commission and to enjoin the enforcement thereof in so far as such reports and orders require or may require the carrier-defendants within the State of Georgia, jointly and severally, to establish, put in force and maintain any rates whatsoever for the transportation of sand and gravel, etc., in intrastate commerce within the State of Georgia.

As grounds for said prayer, your petitioners respectfully show unto the court that the said reports and orders of the Interstate Commerce Commission are arbitrary and unreasonable, beyond the power of the Interstate Commerce Commission, and wholly invalid and unlawful in the following respects and for the following reasons, among others:

(a) Aforesaid reports and orders constitute an unlawful invasion of the sovereign rights of the State of Georgia reserved to it by the Constitution of the United States, and of the citizens of the said State of Georgia, and are without warrant or authority under the constitution of the United States.

(b) Aforesaid reports and orders constitute an unlawful exercise of power by said Interstate Commerce Commission, without warrant or authority under the Constitution of the United States or the Interstate Commerce Act, as amended.

[fol. 180] (c) Aforesaid reports and orders are arbitrary and unlawful in that in substance they purport and seek to restrain and enjoin the Georgia Public Service Commission from requiring the railroads to charge, for intrastate transportation of aforesaid materials within the State of Georgia,

rates which are the same in amount for corresponding distances of actual transportation, or on the same basis, as interstate rates which the aforesaid carriers are permitted by said Interstate Commerce commission to continue charging for interstate transportation into and out of said State of Georgia and in territory contiguous thereto.

(d) Aforesaid reports and orders are arbitrary and unlawful in that they purport to and do impose a formula to govern rates for transportation of said materials within the State of Georgia, not in harmony with a lawful order heretofore entered by the Georgia Public Service Commission prescribing maximum rates for said intrastate transportation; and said Interstate Commerce Commission has no power conferred on it by law to prescribe a rate-making formula, as such, its authority being limited to prescribing reasonable rates, as maximum rates or as minimum rates.

(e) Aforesaid reports and orders are arbitrary and unlawful in that they prescribe rates for actual services of transportation over actual routes of movement in intrastate commerce within the State of Georgia and also in interstate commerce, to be made with regard to fictitious mileages, that is to say, with regard to the distances over routes that are not used and which neither the Interstate Commerce Commission nor the Georgia Public Service Commission could require the carriers to operate as through routes for the transportation of property without infringement of the constitutional rights of said carriers and of their rights under paragraph (4) of section 15 of the In-
[fol. 181] terstate Commerce Act.

(f) The aforesaid reports and orders are erroneous in law and the Commission was without jurisdiction to enter them in so far as they purport to fix rates for the intrastate transportation aforesaid, because under the Commission's order instituting the aforesaid inquiry in No. 17517, under the allegations of the complaint in the aforesaid case No. 17763, and under the aforesaid order of June 4, 1928, reopening the said proceedings for further hearing and investigation, the issues were limited so that the Commission did not have jurisdiction to enter a valid order under the terms of section 13, or of any other section of the Interstate Commerce Act.

(g) The report and order are erroneous because there is no substantial evidence of record in the proceedings wherein they are entered warranting or requiring a finding that the rates for the transportation of the materials in question now charged, or which are made or imposed by authority of the State of Georgia, or any of said rates, for said intrastate transportation, cause any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and in fact, the aforesaid intrastate rates are not preferential, or prejudicial, or discriminatory, or burdensome.

(h) It is apparent from the opinion of the Interstate Commerce Commission in said Docket No. 17517, decided December 9, 1929, that the said Interstate Commerce Commission assumed the power to bring interstate rates and intrastate rates into harmony and assumed that a difference between interstate rates and intrastate rates was unlawful.

(i) Because said Interstate Commerce Commission in [fol. 182] said opinion and the order thereon unlawfully and arbitrarily acted on the assumption that the rates of the Georgia Public Service Commission made after the order of the Commission in its first order in Docket No. 17517 could be changed without considering or permitting evidence with relation to the original order of the Interstate Commerce Commission.

(j) Said opinion and order are erroneous in that the Interstate Commerce Commission required short line railroads against their desire and without evidence of a violation of section 3 or of section 13, to increase their rates above the standard rates from an arbitrary of ten cents to an arbitrary of twenty-five cents per ton.

(k) Because said opinion and order of the Interstate Commerce Commisison creates an unjust prejudice against intrastate shippers in Georgia and an undue preference in favor of interstate shippers shipping into Georgia, in that in the rates prescribed for interstate shipments a maximum rate is prescribed and the interstate carriers are per-

mitted to make groups and the long lines are permitted to meet the rates of the short lines while intrastate in Georgia shipping points four miles apart are not permitted to be grouped and the longer lines are not permitted to meet the rates of the short lines.

(l) Because said opinion and order are unlawful, arbitrary and without jurisdiction in that the interstate rates and the intrastate rates are fixed upon different bases and are not comparable, the intrastate rates being the same whether the shipment is over one or more lines, and the interstate rates being higher when the shipment is over more than one line.

(m) Because under the opinion and order of the Interstate Commission of December 9, 1929 it is permitted for an interstate shipment shipping over a joint line or over a single line to meet lower rates of its competitor with a [fol. 183] shorter distance, and thus to make rates for any particular mileage that are lower than for similar mileages within the Sttae.

(n) That the defendant railroads, as will be shown in their Supplement No. 8 to Freight Tariff No. 33-A, which will be exhibited to the court, in complying with the opinion and order of the Interstate Commerce Commission have reduced many rates in the State of Georgia; that such reduction was not authorized by the Public Service Commission of Georgia and is in violation of the law of the State of Georgia and of the rules and regulations of the state commission and the order of the Interstate Commerce Commission claimed as a justification for such tariff is not authority therefor.

(o) Because said order of the Interstate Commerce Commission here sought to be annulled violates paragraph 3 of section 8 of Article I of the Constitution of the United States in that it is a regulation of commerce which is not among the several states, nor with the Indian tribes, nor with foreign nations, and said order is further in violation, and for the same reason, of sub-divisions a and b of paragraph 2 of section 1 of the Interstate Commerce Act.

XVI

That if the defendant carriers be permitted to collect the increased rates here complained of and contained in the

supplemental tariff hereinbefore referred to and claimed to be authorized by the order of the Interstate Commerce Commission, petitioners will be irreparably damaged; they will have to pay such higher rates and even if they should recover them in the future there would be a multiplicity of suits and expense and under the facts petitioners are entitled in order to prevent their suffering irreparably, to a temporary stay or suspension of the application of said order and of the collection of said rates, and are entitled to an interlocutory injunction to continue until a final hearing hereof.

[fol. 184] Wherefore petitioners respectfully pray:

(1) That notice may be given by mail to the Interstate Commerce Commission and to the Attorney General of the United States and that subpœna issue to the railroads named defendants herein, as required by law.

(2) That on the filing of this petition, and after a hearing had on three days' notice to defendants, this court, under its order temporarily staying or suspending the enforcement, operation, and execution of the order entered by the Interstate Commerce Commission in the proceeding known as "Docket No. 17517, Rates on Chert, Clay, Sand and Gravel within the State of Georgia", in so far as such orders affect intrastate rates within the State of Georgia.

(3) That an interlocutory injunction issue suspending and restraining the enforcement, operation, and execution of said order of the Interstate Commerce Commission in so far as such order effects rates for transportation wholly within the State of Georgia.

(4) For an order enjoining defendant carriers until final hearing from collecting the rates prescribed in the tariffs affecting rates on transportation wholly within said State claimed to be filed in conformity with the order of the Interstate Commerce Commission of December 9, 1929, and from collecting other or different rates than those prescribed for intrastate application by the Georgia Public Service Commission in the State of Georgia.

(5) That after further hearing in accordance with law, said court suspend, set aside, and annul the order and find-

ings of December 9, 1929, and any and all other orders or findings, authorizing, permitting or requiring interference with the intrastate rates of Georgia on the commodities of chert, clay, sand and gravel.

(6) That a permanent injunction be granted against the carrier defendants, enjoining them as prayed in paragraph (4) of this prayer.

[fols. 185-207] (7) That the court make such other and further order or orders as is meet and proper in the premises.

(8) That notice hereof be served upon the United States by leaving a copy of this petition and the order thereon with the Attorney General and the Interstate Commerce Commission; that a temporary restraining order, an interlocutory injunction, and a permanent injunction be granted conformable to the prayers of this petition, and that a writ of subpœna of the United States of America, directed to the carrier defendants hereinbefore named, commanding them on a date certain to appear and answer this bill of complaint and to abide and perform such order and decree in the premises as the court shall deem proper and required by the principles of equity and good conscience.

(9) That petitioners be allowed to proceed as plaintiffs herein and be granted such other and further relief in the premises as may be meet and proper.

All of which petitioners respectfully pray.

Edgar Watkins, Mac Asbill, and Edgar Watkins, Jr., Solicitors and of Counsel for Petitioners.

Duly sworn to by Harry T. Moore. Jurat omitted in printing.

[fol. 208] IN UNITED STATES DISTRICT COURT

In Equity. No. 565

[Title omitted]

ORDER OF CONSOLIDATION—Filed Mar. 1, 1930

It appearing that the plaintiffs and defendants in this bill are all parties to Bill In Equity No. 563, Georgia Public

Service Commission, et al. vs. United States of America, et al. and that the subject matter of litigation is the same in each bill, upon motion to that effect, and no objection being made, it is ordered that this case be consolidated into the case of the Georgia Public Service Commission, et al., vs. United States of America, et al., In Equity No. 563, and that the litigation proceed as one case under the title of the last-named bill.

Feb. 28th, 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Sam'l. H. Sibley, United States District Judge.

[fol. 209] IN UNITED STATES DISTRICT COURT

ORDER SETTING CAUSES—Filed May 12, 1930

Upon motion of counsel for petitioners, the above styled causes are set for final hearing before Judges Nathan P. Bryan, Wayne G. Borah, and Samuel H. Sibley at Jacksonville in the United States Courtroom, at ten a. m., June 23, 1930. Plaintiffs' counsel will give notice to opposing counsel of this setting.

This 12 day of May, 1930.

Sam'l H. Sibley, U. S. Judge.

[fol. 210] IN UNITED STATES DISTRICT COURT

PETITION FOR INTERVENTION AND ORDER THEREON

Now comes the Roquemore Gravel Company, Alabama Sand and Gravel Company, and Dixie Sand and Gravel Company, and respectfully represent that they have an interest in the matters in controversy in the above mentioned proceedings, and desire to intervene and become parties defendant to such proceedings, and for grounds of the proposed intervention say:

1

Your petitioners, each and all, were complainants before the Interstate Commerce Commission in I. C. C. Docket

Number 17763; that the proceedings thereunder were consolidated with I. C. C. Docket Number 17517, for the purpose of investigation and hearing before said Interstate Commerce Commission.

2

That the order of the Interstate Commerce Commission that the Complainants herein now seek to enjoin and set aside in the proceedings at bar, is the order which said Interstate Commerce Commission issued in the consolidated proceedings, I. C. C. Docket Number 17517 and 17763, hereinbefore described.

3

That your petitioners are interested in the subject matter of this litigation and that their admission as parties defendant is reasonably necessary to the protection of their respective intetests.

Wherefore said petitioners pray the Court to make and cause to be entered herein an order permitting said petitioners to file petition of intervention in the above entitled cause.

C. E. Cotterill, Joseph J. Hopkins, Attorneys for Petitioners.

[fol. 211] Order

The foregoing petition for intervention of The Roquemore Gravel Company, Alabama Sand and Gravel Company and Dixie Sand and Gravel Company, having been presented, read and considered, same is hereby sanctioned and ordered filed.

It is further ordered that The Roquemore Gravel Company, Alabama Sand and Gravel Company and Dixie Sand and Gravel Company be and hereby are each and all made parties defendant in the above entitled proceedings.

Dated this the 24th day of June, 1930.

N. P. Bryan, Wayne G. Borah, Sam'l H. Sibley.

[fol. 212] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. Nos. 563 and 565

GEORGIA PUBLIC SERVICE COMMISSION et al., Petitioners,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

OPINION—Filed Mar. 3, 1930

Bill No. 563 was brought by the Public Service Commission of Georgia under 28 U. S. Code, Sec. 41 (28), and Secs. 46 and 47, to enjoin and set aside the order of the Interstate Commerce Commission, dated Dec. 9, 1929, on its docket No. 17517, whereby State rates in Georgia on stone, slag, sand, gravel, etc., were prescribed to conform to the interstate rates thereon. Bill No. 565, brought by other interested parties for the same purpose, has been consolidated into No. 563. On the hearing for an interlocutory injunction, the evidence before the Interstate Commerce Commission in making the order was not introduced here, so that no question depending on that evidence can be considered, but only such questions as arise upon the face of the order and of the findings of fact preliminary to it. The proceedings of the Interstate Commerce Commission which began in 1925 are reported in 122 I. C. C. 133, and 160 I. C. C. 309, and will be barely summarized here. Reasonable interstate rates on stone, slag, sand, gravel, etc., for what may be referred to as the Georgia territory were investigated, and also the question of discrimination by the then intrastate rates under the procedure authorized by Sec. 13 (4) of the Interstate Commerce Act as amended. After a hearing which was indubitably full, on Jan. 21, 1927, a scale of maximum rates based on distance was established as reasonable in interstate commerce. The finding as to [fol. 213] discrimination by the Georgia intrastate rates was thus stated (122 I. C. C. 169):

"Considering the results brought about by this order, (that establishing the then Georgia rates), it could not be

found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings, approving a distance scale of rates for application alike to the interstate transportation of all the commodities here considered. There is, of course, no transportation reason for the maintenance of a different basis of intrastate rates on these commodities than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia Commission in the past, which we have adverted to, we do not now deem it necessary to make any finding or utter any order in No. 17517 for the future insofar as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia Commission will cooperate in authorizing such revision as may be necessary to bring their rates into harmony with the interstate adjustment herein approved."

The Georgia Commission did revise its rates March 13, 1928, adopting a maximum scale based on distance in the main upon the plan of the interstate scale. Its authorized charges on single line hauls for distances under 200 miles agree with the interstate scale in ten items, but are lower in seven, and for distances over 200 miles agree in three items, but are higher in nine. On joint line hauls the differences are greater, and in all cases the Georgia scale is lower. A difference of view as to weak lines of railroad, and some other matters, also appears. Thereupon, on complaint, the Interstate Commerce Commission reopened its docket No. 17517 for the purpose of reconsidering the question of discrimination by the altered State rates against interstate commerce, but refused to go again into the question of the reasonableness of the two opposing scales. On Dec. 9, 1929, on full findings of the existence of discrimination against interstate commerce, the order here complained of was en- [fol. 214] tered, the general effect of which is to prescribe the interstate scale for use in intrastate transportation. The only contentions of complaint arising upon the face of this record which seems to us to be debatable are:

1. That a full hearing was denied in that, since the new Georgia rates were prescribed, the matter was reopened only as to discrimination by them against interstate com-

merce, excluding the question of their intrinsic reasonableness.

2. That the order did not stop with prescribing a maximum for interstate rates, but took over from State authority the general function of intrastate rate making on these commodities for the future.

3. That the minimum sought to be prescribed is indefinite and uncertain.

4. That as to rates above 200 miles the interstate rates are arbitrary and unreasonable, and themselves discriminate against the shorter hauls and other commerce.

1. The delegation to the Interstate Commerce Commission of power to prescribe an intrastate rate is found in Sec. 13, subsection (4), of the amended Commerce Act. The power reaches to the general revision of generally discriminatory State scales. Wisconsin R. R. Commission v. C. B. & Q. R. R., 257 U. S. 563, and to dealing with particular rates, commodities and practices, Florida v. United States, 30 Fed. (2d) 116. But in every exercise of this interference with State functions the procedure required by subsection (4) must be followed. The first named requisite of the hearing required is that there be a "full hearing." If discrimination in State rates be found substantial enough to require removal, the question must then always arise whether the State rate or the interstate rate is unreasonable and should be altered. A previous establishment of the interstate rate as reasonable will not settle the question, because the representatives of the State are entitled to a full hearing on this question of relative reasonableness. We think, however, that such a hearing was here afforded. A full hearing was undoubtedly given prior to the order of Jan. 21, 1927. The identical State rates were not then in existence, but all the questions they raise were in existence and were investigated. New interstate rates were in that very proceeding established as reasonable, and the opinion [fol. 215] expressed that as no transportation differences existed, the State rates ought to conform in order to escape future discrimination, but no positive order of conformity was then issued, in order that the State Commission might work the State rates out for itself. This left the proceeding in a manner uncompleted, and certainly proper to be

reopened after the State rates were made. Ordinarily, nothing would be then left for examination except whether the new State rates did so conform to the new interstate rates as to escape discrimination. It was found that they did not, and conformity was ordered on a review of the whole record. While the hearing, which is to be considered a single one, lasted for years, we cannot say the evidence taken in any part of it had become stale. If the Georgia Commission had any definite proof of altered conditions, it should have been concretely offered. We discover no abuse of procedure in reaching the order of Dec. 9, 1929, in the evidence now before us.

2. The second question depends upon the language of the order. Section 13 (4) provides that the Interstate Commerce Commission, on finding discrimination by State rates, "shall prescribe the rate, fare or charge, or the maximum or minimum, or maximum and minimum thereafter to be charged." The language is mandatory. One of four things must be done: First, make a fixed rate; Second, make a maximum; Third, make a minimum; Fourth, fix both a maximum and a minimum. The order of Dec. 9, 1929, undertakes the last. It requires the establishment of intrastate rates "which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities . . . not exceeding the rates set forth in the appendix to this report, and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities." Elsewhere the order uses, the expression "contemporaneously maintained by" the railroads. The maximum thus prescribed is the maximum scale definitely set forth in the appendix, and the same as the maximum in interstate commerce. No question is raised as to its validity. The minimum is the rate "contemporaneously applicable" or "contemporaneously maintained" by a particular carrier in interstate commerce for the same distances. [fol. 216] Whether the minimum is lawfully prescribed we all think depends on whether the order means by "contemporaneously" the rates now applicable and now maintained by the railroads, which we think would be a certain and lawfully fixed minimum, or whether it means the rates that may at any time in the future be applicable or maintained by the railroads in interstate commerce. In the lat-

ter meaning we think the order would be unlawful because should in the future any of the interstate rates be altered, either by the railroads or by the Commission itself on the usual proceedings only, a change in the existing State rates would ipso facto result. Thus for all time in the future until this order should be revoked, the Interstate Commerce Commission would have absorbed to itself the complete control of intrastate rates on these commodities, altering them by altering the interstate rates without the hearing as to then conditions which is required by Sec. 13 (4). If this could be done as to these rates, it could be done for all rates, and if for all rates in Georgia, for all rates in all the States. The complete control of intrastate rates could be reached by one general hearing in which it was determined that all State rates which differed from interstate rates were discriminatory and to be conformed to contemporaneous interstate rates, with future changes only such as the carriers or the Interstate Commerce Commission might make. This would have much in the way of simplicity and uniformity to commend it, but as the Constitution, which gives the Federal Government the right to regulate interstate commerce, has reserved the general control of intrastate commerce to the States, we think this result could be achieved only by altering the Constitution. Certainly the powers of the Commission under Sec. 13 (4) were not intended to be so stretched. The section contemplates investigation of particular situations under conditions then existing, with a full, formal hearing, and authorizes interference with State rates only when there is disclosed a present, real and substantial discrimination against, or other specified detriment to, interstate commerce. Florida v. The United States, 30 Fed. (2d) 117. An order like the present one applying to but one rate would be as vicious in [fol. 217] principle, and unlawful for the same reasons, as the most extreme one that has been supposed would be. A majority of this Court are of the opinion that the present order means only to establish as the minimum the interstate rates actually in force at its date. The writer thinks it means to operate automatically in the future whenever interstate rates may be altered, and, that thus intended, it is unlawful. On the ground, however, that it might mean either thing, and should, if possible, be so construed as to be lawful, I acquiesce in sustaining it. State of Florida

v. United States, 30 Fed. (2d) 117, P 3. Even so, it appears that some of the railroads, at the date of the order, had special rates allowed for reasons of competition on some of their hauls which are out of line with their general mileage scale. The question is raised as to which rate shall be the minimum for the particular distance, seeing that the railroad has two established rates for it. Probably, as minimums are involved, the lowest established rate should be followed, but the record does not show what the exact situation is, so that it could really be adjudicated. Nor do we think an exceptional situation such as is suggested would render uncertain and invalid the entire order. It should rather be amended by a supplemental order covering the particular overlooked instances. See Wisconsin R. R. Commission v. C. B. & Q. R. R., 257 U. S. 570.

4. The last question is whether the interstate scale of maximums is not arbitrary and unreasonable and discriminatory against intrastate commerce in that the hauls above 200 miles are too low to be compensatory, and thus throw an undue burden on other commerce, so that the higher State rates on such hauls should not have been displaced. It is found that the intrastate commerce is mostly on the hauls under 200 miles. If the longer hauls are non-compensatory, they tend to favor interstate commerce at the expense especially of intrastate commerce. Dealers outside of Georgia would not be entitled to an unfairly low rate because they could not otherwise compete in Georgia markets. Geographical position must limit the range of business in such articles as stone, sand, gravel and the like. [fol. 218] The Georgia Commission thinks the interstate rates for hauls above 200 miles are thus improper. Interstate Commerce Commissioners Aitchison and Woodlock think the same. 122 I. C. C. 173. But the majority of the Interstate Commerce Commissioners have determined otherwise, and since the evidence is not before us, we are bound to regard the conclusion of the majority as correct.

On the whole case we find no sufficient cause to hold the attacked order to be unlawful, and refuse an interlocutory injunction.

Sam'l H. Sibley, Dist. Judge.

[fol. 219] IN UNITED STATES DISTRICT COURT

In Equity. Nos. 563 and 565

GEORGIA PUBLIC SERVICE COMMISSION et al., Petitioners,

versus

UNITED STATES OF AMERICA et al., Defendants

Consolidated Cause

ORDER DENYING INTERLOCUTORY INJUNCTION—Filed Mar. 1, 1930

This cause came on for hearing for an interlocutory injunction before a Court composed of Honorable Nathan P. Bryan, Circuit Judge, Honorable Wayne G. Borah, District Judge and Honorable Samuel H. Sibley, District Judge, pursuant to statute in such case provided.

After hearing the evidence submitted, and argument, for reasons to be set forth in an opinion hereafter filed it is considered, ordered and adjudged that the interlocutory injunction prayed for be, and the same is hereby, denied.

February 28th, 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

[fol. 220] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. Nos. 563 and 565

GEORGIA PUBLIC SERVICE COMMISSION et al.

vs.

THE UNITED STATES OF AMERICA et al.

Before Bryan, Circuit Judge; Sibley and Borah, District Judges

OPINION—Filed July 5, 1930

SIBLEY, District Judge:

Our opinion in this case refusing a preliminary injunction is reported 39 F.(2) 169. A hearing for final decree

has now been had with the record of the proceedings before the Interstate Commerce Commission in evidence. The evidence leads us to no different conclusion. We adhere to what was said in the previous opinion. In it two matters were indicated in whose consideration the evidence might be helpful. The one respecting the lowness of the level of the rates for distances over two hundred miles as compared with those under two hundred miles has not been further argued in briefs or orally, and we treat the contention as abandoned. The other is involved in the question which was most discussed, to-wit: Whether the Commission prescribed a certain and lawful minimum for intrastate rates in fixing as such the interstate rates actually maintained by the carriers on December 9th, 1929, the date of the order here attacked, 160 I. C. C. 309. When the Commission, after the hearing required by Sect. 13(4) of the Commerce Act, undertakes to prescribe a rate, or a maximum or a minimum for intrastate commerce, its order must be certain and capable of practical application. American Express Co. vs. Caldwell, 244 U. S. 617; Ill. Cent. R. R. Co. vs. State Commission, 245 U. S. 493. As previously held, [fol. 221] a maximum and minimum were undertaken to be fixed by the order of December 9th, 1929. The maximum, identical with that previously fixed for interstate commerce in 122 I. C. C. 133, is a scale based on distances, higher for joint-line than for single-line hauls, and is accepted as sufficiently certain and practical. Under it the carriers had on December 9th, 1929, established a system of rates between points in Georgia and points in other states which were prescribed as the intrastate minimum. These rates are embraced in several tariffs filed with the Commission and in evidence. They consist of hundreds of point-to-point rates between named places in Georgia and in other states. Then for all points not thus specially named the scale fixed by the Commission as the maximum is established at the rate. It is asserted, and we assume it to be true, that the vast majority of these point-to-point rates are mere applications of the scale, joint- or single-line as the case might be, to the distances involved. So far, therefore, the actual rates are nothing but the maximum scale. Where, however, there are several routes between two points, the Commission, in its order establishing the interstate scale, had directed that all routes not circuitous be-

yond a fixed per cent might take the same rate and the lowest over any route, joint- or single-line, by which carload freight might move without transfer of lading. When a circuitous route thus took a rate less than called for by its mileage, the Commission also provided for maintenance of the scale rates to intermediate points which were non-competitive, notwithstanding the long and short haul provision of Section 4 of the Act. Many of the point-to-point rates to competitive and intermediate points as filed were made under these provisions. It is these departures from the maximum scale which are claimed to make the actual rates uncertain and contradictory as a minimum for intrastate rates, especially in view of the difference for single and joint-line hauls. This contention was strongly urged before the Commission and is dealt with by its report in [fol. 222] 160 I. C. C. at pages 323 and 324. The Commission there states that the departures from the maximum scale are all to be thus accounted for, or are errors to be corrected and, as we understand the Commission, they express an expectation that similar modifications will be made in intrastate rates under the like circumstances. Otherwise the interstate scale would simply have been made the intrastate rate. The evident purpose of the Commission was to equalize rates in interstate and intrastate commerce, distance considered, under similar circumstances and conditions. Because of the close competition and the large figure which the rate cuts in the price of the commodity here involved, slight additions in the rate are found to affect vitally the business done. Hence the necessity, from the standpoint of shippers, of substantial equality between the rates under similar circumstances, to prevent discrimination between intrastate and interstate commerce. We see nothing to hinder the Georgia State Commission from causing the establishment of intrastate rates which will follow the same principles that were applied in fixing interstate rates where competition justifies departure from the maximum scale. Had the Commission prescribed a fixed intrastate scale, the State Commission, or the carriers, would have been bound to establish it forthwith. When instead a maximum and minimum are fixed, as is allowed by Section 13(4), the fixing of the exact rates within these limits is to be done by the State Commission on its usual procedure. If the result in any instance is thought

contrary to the order of the Interstate Commerce Commission, the latter may be applied to for further or clarifying order in the premises.

Evidence is offered, and objected to, that the carriers are seeking to establish as the scale for intrastate rates the bare maximum scale fixed for interstate rates. Our sole jurisdiction at present is to enjoin or set aside the order of the Interstate Commerce Commission, if unlawful. We cannot fix, or aid in fixing, the intrastate rates. It seems to us, however, plain that the carriers would not be entitled to set up the maximum scale without application of the [fol. 223] modifications above discussed with reference to competitive points. This would not secure the equality of rates under similar circumstances aimed at by the Commission, but would produce discrimination in favor of interstate against intrastate commerce, which the Commission would have no power to cause. The Commission refused to establish the scale as the intrastate rate, but only made it the maximum, thus indicating that departures were allowed to conform with the actual interstate rates which were named as minimums. The State Commission has the remedy in its own hands to require the establishment of rates which will really conform to the rates maintained in interstate commerce by applying the above discussed principles in reference to competitive and intermediate points.

Strong objection is raised to the complication of having a different scale for joint- and single-line hauls of crushed stone, sand, etc., especially since the differential has been abolished in most other rates. Southern Class Rates, 100 I. C. C. at pages 627 and 628; Southern Fertilizer Rates, 113 I. C. C. 389, 425. As we said in Alabama vs. United States, just decided, there are sound reasons for saying that there is extra cost in handling a car over a joint line, and this extra cost is most important to the carriers in their lowest rates. Whether compensation for the extra cost shall be had in a separate joint scale of rates or in a slightly higher average of rates is within the competency of the Commission to decide.

Some uncertainty of necessity exists whenever a maximum and minimum is prescribed for intrastate rates by the Commission instead of direct prescription of the rates, but the uncertainty leaves liberty of action to that extent to the State Commission. We think the order here at-

tacked, in spite of its alleged uncertainties and complications, can be practically applied so as to obtain a substantial parity of interstate and intrastate rates by it, and that it should not be set aside. A decree has accordingly been entered dismissing the bill.

This July 5th, 1930.

[fol. 224] In United States District Court

Order of Dismissal on Final Hearing—Filed June 25, 1930

This cause came on for final hearing before the undersigned, and was argued by counsel.

Upon consideration of the pleadings and evidence, it is ordered, for reasons to be stated in an opinion hereafter to be filed, that the relief prayed for be denied, and that the bill of complaint be dismissed.

June 24th, 1930.

N. P. Bryan, United States Circuit Judge. Wayne K. Borah, United States District Judge. Sam'l H. Sibley, United States District Judge.

[fol. 225] In United States District Court

[Title omitted]

In Equity. No. 563. In Equity. No. 565

Petition for Appeal—Filed Aug. 23, 1930

Georgia Public Service Commission and James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, as Commissioners thereof, complainants, feeling themselves aggrieved by the final order or decree of the United States District Court for the Northern District of Georgia, dated, June 24th, 1930, which denied the relief sought and dismissed the bill, pray an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed

herewith. They pray that their appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent [fol. 226] to the Supreme Court of the United States.

S. J. Smith, Jr., S. J. Smith, Luther M. Walter, Luther M. Walter, Nuel D. Belnap, Nuel D. Belnap, John S. Burchmore, John S. Burchmore, Solicitors for Georgia Public Service Commission et al., Petitioners in No. 563.

August 14th, 1930.

And State Highway Board of Georgia, Commissioners of Roads and Revenues of Fulton County, City of Atlanta, Brown Brothers, Georgia Gravel Company, Central of Georgia Sand Company, and C. W. Moore, Complainants, likewise feeling themselves aggrieved by the said final order or decree of the United States District Court for the Northern District of Georgia, dated, June 24th, 1930, which denied the relief sought and dismissed the bill, likewise pray an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. They pray that their appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States.

Edgar Watkins, Edgar Watkins, Mac Asbill, Mac Asbill, and Edgar Watkins, Jr., Edgar Watkins, Jr., Solicitors for State Highway Board of Georgia et al., Petitioners in No. 565.

[fol. 227] IN UNITED STATES DISTRICT COURT

[Titles omitted]

In Equity. No. 563. In Equity. No. 565

ASSIGNMENT OF ERRORS—Filed Aug. 23, 1930

Now come the Georgia Public Service Commission and James A. Perry, Albert J. Woodruff, Walter R. McDonald,

Calvin W. Parker, and Perry T. Knight, as Commissioners thereof, and State Highway Board of Georgia, Commissioners of Roads and Revenues of Fulton County, City of Atlanta, Brown Brothers, Georgia Gravel Company, Central of Georgia Sand Company, and C. W. Moore, the plaintiffs in the above entitled cause, and jointly file the following assignment of errors upon which they will rely upon their prosecution of their appeal in the above entitled cause from the order and decree made by a court of three judges in this honorable Court on the 24th day of June, 1930, and show that the Court erred in the following particulars, to-wit:

1. In not concluding and decreeing that the reports and orders of the Interstate Commerce Commission sought to the enjoined herein constitute an unlawful invasion of the sovereign rights of the State of Georgia and the rights of the citizens of Georgia reserved to them by the Tenth [fol. 228] Amendment to the Constitution of the United States, and are without warrant or authority under Article 1, Sec. 8, par. 3 of the Constitution of the United States.

2. In not concluding and decreeing that the reports and orders of the Interstate Commerce Commission sought to be enjoined herein constitute an unlawful exercise of power by said Commission, without warrant or authority under Article 1, Sec. 8, par. 3 of the Constitution of the United States or Section 1, par. 2, sub. par. (a) of the Interstate Commerce Act, as amended.

3. In not concluding and decreeing that there was no adequate finding by and no substantial evidence before the Interstate Commerce Commission authorizing or justifying that Commission in regulating and prescribing intrastate rates on sand, gravel, clay gravel, crushed stone, and slag within the State of Georgia and in not enjoining and annulling the orders of such Commission sought to be enjoined and annulled in this cause.

4. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that said orders are arbitrary and unlawful in that in substance they restrain the Georgia Public Service Commission, as the regulatory body administering the statutes of the State of Georgia, from requiring the rail-

roads to charge, for intrastate transportation within the State of Georgia, rates which are the same in amount for corresponding distances of actual transportation, as interstate rates which the aforesaid carriers are permitted by said Interstate Commerce Commission to continue charging for interstate transportation into and out of said State of Georgia, not in harmony with a lawful order heretofore

5. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, because aforesaid orders are arbitrary and unlawful in that they purport to and do impose a formula to govern rates for transportation of said materials within the State of Georgia, not in harmony with a lawful order heretofore entered by the Georgia Public Service Commission prescribing maximum rates for said intrastate transportation; and said Interstate Commerce Commission has no power [fol. 229] conferred on it by law to prescribe a rate-making formula, as such, its authority being limited to prescribing reasonable and non-prejudicial rates, as maximum rates or as minimum rates.

6. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that said orders are erroneous and invalid because they purport to rest on the principle that the rates ought to be higher for so-called joint line movements, over the lines of two or more carriers, than for corresponding distances over the individual line of a single carrier, and there was no evidence before the said Commission tending to establish or support such principle or to show that transportation over joint lines is necessarily more expensive than over single line routes.

7. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that aforesaid reports and orders are arbitrary and unlawful in that they prescribe maximum and minimum rates for actual services of transportation over actual routes of movement in intrastate commerce within the State of Georgia and also maximum rates in interstate commerce, to be made, however with regard to fictitious mileages, that is to say, with regard to the distances over supposed routes that are not used and which neither the In-

terstate Commerce Commission nor the Georgia Public Service Commission could require the carriers to operate as through routes for the transportation of property without infringement of the constitutional rights of said carriers under the Fifth Amendment and of their rights under paragraph (4) of Section 15 of the Interstate Commerce Act.

8. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that said orders are arbitrary and unlawful in that minimum rates are therein prescribed to govern intrastate transportation within the State of Georgia and only maximum rates have been fixed as reasonable for interstate transportation into and out of said state and in contiguous territory and the evidence before the Court shows that carriers are commonly charging less than the full measure of said maximum rates for interstate transportation.

9. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined [fol. 230] herein, because the aforesaid orders are erroneous in law and the said Commission was without jurisdiction to enter them, insofar as they purport to fix rates for intrastate transportation in Georgia, because the issues were limited under the Commission's order instituting the inquiry in No. 17517, under the allegations of the complaint in the case No. 17763, and under the order of June 4, 1928, reopening the said proceedings for further hearing and investigation, so that the Commission did not receive evidence concerning the reasonableness of the rates and did not establish its jurisdiction to enter a valid order under the terms of Section 13, or of any other section, of the Interstate Commerce Act.

10. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that aforesaid reports and orders are erroneous and invalid because the record of evidence on which they were entered does not show the transportation conditions, or the circumstances and conditions under which aforesaid materials actually are transported for the respective intrastate movements within the State of Georgia

and interstate movements into and out of said state, and therefore the record affords no basis for determining the similarity or dissimilarity of the actual services under said intrastate rates, on the one hand, and under the interstate rates, on the other hand.

11. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that they are erroneous because there is no substantial evidence of record in the proceedings wherein they are entered warranting or requiring a finding that the rates for the transportation of the materials in question now charged, or which are made or imposed by authority of the State of Georgia, or any of said rates, for said intrastate transportation, cause any undue or unreasonable advantage, preference or prejudice, as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, or any burden upon interstate or foreign commerce; and in fact, the aforesaid intrastate rates are not preferen- [fol. 231] tial, or prejudicial, or discriminatory, or burdensome.

12. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that the said reports and orders are arbitrary and unlawful, in that the said Commission has therein authorized violations of the long-and-short-haul principle with respect to interstate rates, by granting permission to circuitous rail lines or routes, because of such circuity, to meet the charges of more direct lines or routes to and from competitive points and to maintain higher charges to and from intermediate points as to which the haul of the said longer lines were not longer than that of the direct line or route between the aforesaid competitive points, in violation of par. (1) of Section 4 of the Interstate Commerce Act, and the rates fixed by said Commission as minimum for intrastate transportation in Georgia create violations of the same principle.

13. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that the aforesaid reports and orders are erroneous and invalid, because the said Commission therein undertakes to require reductions in intrastate rates within the State of Georgia, which are wholly beyond the jurisdiction of said Commission to reduce under Section 1. of the Interstate Commerce Act, par. 2, sub. par. (a); and because the rates therein required tend to create and will create unjust discriminations and undue preferences as among different and competing shippers and producers of said materials in Georgia, in violation of the statutes of said state governing such intrastate transportation.

14. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, because there was no substantial evidence before the Interstate Commerce Commission that the rates on sand, gravel, clay gravel, crushed stone, and slag within the State of Georgia violated section 3 or 13 of the Acts to Regulate Commerce when such rates are compared with the scale of rates fixed by the Interstate Commerce Commission in its opinion of January 21, 1927.

15. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined [fol. 232] herein for the reason that such rates are general and applicable throughout the State when there is no evidence of any violation of the Interstate Commerce Act by the larger number of intrastate rates in Georgia.

16. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that said orders are erroneous in that the Interstate Commerce Commission required short line railroads, against their desire and without evidence of a violation of section 3 or of section 13 of the Acts to Regulate Commerce, to increase their intrastate rates above the standard rates from an arbitrary of 10 cents to an arbitrary of 25 cents per ton.

17. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that said orders of the Interstate

Commerce Commission created an unjust prejudice against intrastate shippers in Georgia and an undue preference in favor of interstate shippers shipping into Georgia, in that in the rates prescribed for interstate shipments a maximum rate is prescribed and the interstate carriers are permitted to make groups and the long lines are permitted to meet the rates of the short lines, while intrastate — in Georgia from shipping points only short distances apart are not permitted to be grouped and the longer lines are not permitted to meet the rates of the short lines.

18. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that such orders condemned intrastate rates in Georgia ordered into effect by the Georgia Public Service Commission in March, 1928 in comparison with rates fixed by the Interstate Commerce Commission in a report dated January 21, 1927 when as to such rates so fixed in 1927 there had never been any hearing concerning their relationship to the rates intrastate in Georgia prescribed in March, 1928 by the Georgia Commission.

[fol. 233] 19. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein because the orders of such Commission making effective the rates found reasonable in its opinion of December 9, 1929 intrastate in Georgia were in violation of the fifth amendment to the Constitution of the United States and of the Acts of Congress in that plaintiffs were deprived of due process of law and of a full hearing.

20. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that said Commission in its opinion and the orders thereon, herein sought to be enjoined, unlawfully and arbitrarily acted on the assumption that the rates of the Georgia Public Service Commission, ordered into effect in 1928 and after the order of the Interstate Commerce Commission of January 21, 1927, could be changed without considering or permitting evidence with relation to the order of the Interstate Commerce Commission entered in January, 1927.

21. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein

for the reason that said order of the Interstate Commerce Commission of December 9, 1929 permits an interstate shipment moving over a joint line or over a single line to meet lower rates of its competitor with a shorter distance and thus to make rates for any particular mileage that are lower than for similar mileages within the State.

Wherefore petitioners pray that said order and decree of June 24, 1930 be set aside and that they be granted relief as prayed in their original petitions.

S. J. Smith, Jr., John S. Burchmore, Solicitors for Complainants in No. 563. Edgar Watkins, Mac Asbill, Solicitors for Complainants in No. 565.

[fols. 234-236] IN UNITED STATES DISTRICT COURT

[Titles omitted]

In Equity. No. 563. In Equity. No. 565

ORDER GRANTING APPEAL—Filed Aug. 23, 1930

The complainants having filed their petition for appeal herein, the same is hereby granted and the complainants are hereby allowed to appeal said consolidated causes and

It is ordered that said appeal be and the same is hereby granted to the Supreme Court of the United States upon the filing of bonds by said complainants in the sum of 1,000.00 Dollars, with good and sufficient surety to be approved by this Court, conditioned upon the said complainants prosecuting their appeal to effect, and answering all costs if they fail to make their plea good.

This 14th day of August, A. D. 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Sam'l H. Sibley, United States District Judge.

[fol. 237] IN UNITED STATES DISTRICT COURT

[Titles omitted]

In Equity. No. 563. In Equity. No. 565

ORDER ENLARGING TIME WITHIN WHICH TO DOCKET THE CASES AND FILE THE RECORD THEREOF—Filed Aug. 23, 1930

It appearing that the parties and their respective counsel are distant; and that further time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of the record of this Court on the Appeal, and for other good cause shown;

It is ordered that the time in which the Georgia Public Service Commission, and James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, as Commissioners thereof, and the State Highway Board of Georgia, et al., complainants, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and their designation for the record of additional appeal papers which have been filed, and in which [fol. 238] to cause the transcript of the record to be completed, and in which to docket the case and file the record thereof with the Clerk of the Supreme Court of the United States, be, and it is hereby, enlarged to and including Wednesday the 15th day of October, 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Sam'l H. Sibley, United States District Judge.

Dated —— —, ——.

The entry of the foregoing order enlarging the time within which to docket the cases and file the record thereof is hereby consented to.

S. J. Smith, Jr., John S. Burchmore, Solicitors for Complainants in No. 563. Edgar Watkins, Mac Asbill, Solicitors for Complainants in No. 565. Elmer B. Collins, Solicitor for United States of America. Daniel W. Knowlton, Solicitor for Interstate Commerce Commission. Alston, Alston, Foster & Moise, Solicitor- for Atlantic Coast Line Railroad Company. W. N. McGehee, Solicitor for Southern Railway Co.

[fol. 239] IN UNITED STATES DISTRICT COURT

[Titles omitted]

No. 563. In Equity. No. 565. In Equity

STIPULATION RE TRANSCRIPT OF RECORD—Filed November 10, 1930

On the final hearing in the above-entitled cases the plaintiffs have offered in evidence a certified copy of the transcript of the record of the evidence and proceedings before the Interstate Commerce Commission in the proceedings entitled "Rates on Chert, Clay, Sand and Gravel Within the State of Georgia", Docket No. 17517, and other proceedings consolidated and heard therewith upon one record, consisting of a total of approximately 2219 pages of the oral testimony of the witnesses (excluding pages 1013 to 1691, inclusive, which have no materiality upon the issues involved here) and approximately 346 numbered and two unnumbered exhibits; and the same having been received in evidence by the Court; and the plaintiffs further offered in evidence copies of certain tariff schedules of rates filed by the railroad companies respondents in No. 17507 with the Commission under the provisions of [fol. 240] Section 6 of the Act and the same having been received in evidence by the Court; and the plaintiffs having seasonably filed and served a condensed narrative of such portions of the transcript of the evidence and proceedings as the plaintiffs deem material and necessary for the determination of the appeal; and now for the purposes of reducing and settling the record of appeal pursuant to

Equity Rule 75, the parties by their respective counsel (and with the approval of the Court) stipulate:

1. The within and attached narrative of 725 pages is a true and correct transcript in narrative form of all of the oral testimony introduced at the hearings before the Commission material and relevant to the subject matter of this appeal, as the same is contained in the official typewritten transcript in the proceedings referred to.

2. The narrative shall be substituted for the original transcript of the oral testimony so certified by the commission, shall be incorporated upon the record upon appeal and shall have the same force and effect upon the appeal as the original testimony.

3. The exhibits numbered 1 to 244, inclusive, and numbered 98B to 199B, inclusive, as referred to in the certified copy of the transcript and in the aforesaid narrative, and two unnumbered exhibits and the tariff schedules likewise there referred to shall stand as original exhibits and shall be incorporated in the record upon appeal.

4. On the hearing of the appeal before the Supreme Court, the following original exhibits need not be printed, to-wit: Nos. 81, 157, 166, 182, 188, 189, 203, 204, 205, 217, 220, 101B, 153B, and various tariff schedules of the railroad companies respondents before the Commission as above referred to; but either side or any party by counsel or the [fol. 241] Court, or any member thereof, may refer to the aforesaid tariff schedules of the defendants or to any one or more of them or to any part or portion thereof with the same force and effect as if the same had been printed in full in the transcript.

John N. Burchmore, Watkins, Asbill & Watkins, Solicitors for Plaintiffs. Elmer B. Collins, Special Assistant to the Attorney General, for U. S. Edward M. Reidy, for Interstate Commerce Commission. Alston, Alston, Foster & Moise, for Atlantic Coast Line Railroad Company et al. W. N. McGehee, for Southern Railway Company et al. Charles E. Cotterill, Joseph J. Hopkins, for Roquemore Gravel Company et al., Intervenors. Alston, Alston, Foster & Moise, for Atlanta and West Point R. R. Co.

Order

It is ordered, that the within and attached stipulation and narrative be, and the same are hereby, approved; and in preparing, certifying and transmitting the transcript of the record to the Supreme Court of the United States, the Clerk is directed to proceed in accordance therewith.

Atlanta, Ga., November 10th, 1930.

Sam'l H. Sibley, United States District Judge.

[fol. 242] In United States District Court

[Titles omitted]

In Equity. No. 563. In Equity. No. 565

Præcipe for Transcript of Record—Filed Sept. 6, 1930

The Clerk of this Court is hereby directed to prepare and certify the transcript of the record in the above entitles cause for the use of the Supreme Court of the United States by including therein:

1. The original bill filed by the Georgia Public Service Commission, and others, in Docket 563.

2. The original bill filed by the State Highway Board of Georgia, and others, in Docket 565.

3. The order of the District Judge of the United States for the Northern District of Georgia calling a three judge court, and the order consolidating the causes.

4. The answers filed by the defendants in both 563 and 565.

5. The order of March 1st 1930 signed by the three judges composing the specially constituted district court and denying the application for an interlocutory injunction.

6. The opinion of the three judge court dated 3rd day of March, 1930, holding that a temporary restraining order or interlocutory inju-ction should not be granted.

[fol. 243] 7. The order and decree of June 24, 1930 signed by the three judges composing the specially constituted district court and denying the application for permanent injunction and dismissing the bill.

8. Copy of opinion signed by the three judges composing the specially constituted district court in support of the order and decree of June 24, 1930 denying the application for a permanent injunction and dismissing the bill.

9. Petition for appeal and order thereon, assignment of errors, and appeal bond.

10. Citation on appeal and acknowledgment of service thereon.

11. Order of August 14, 1930 enlarging the time within which to file a transcript of the testimony approved in accordance with Equity Rule 75.

12. Transcript of testimony or narrative of evidence and exhibits thereto attached, and order approving the same, together with service thereon.

13. All other exhibits introduced in evidence.

14. This order with service thereon.

This the 23 day of August, 1930.

Luther M. Walter, Nuel D. Belnap, John S. Burchmore, S. J. Smith, Jr., Solicitors for Georgia Public Service Commission et al., Petitioners in No. 563. Edgar Watkins, Mac Asbill, Edgar Watkins, Jr., Solicitors for State Highway Board of Georgia et al., Petitioners in No. 565. Elmer B. Collins, Special Assistant to the Attorney General, for United States of America. Edward M. Reidy, for Interstate Commerce Commission. Alston, [fol. 244] Alston, Foster & Moise, for Atlantic Coast Line Railroad Co. et al. W. N. McGehee, for Southern Railway Co. et al. Chas. E. Cotterill, Joseph J. Hopkins, for Roquemore Gravel Co. et al.

Approved.

Sam'l H. Sibley, U. S. District Judge.

[File endorsement omitted.]

[fols. 245-250] Citation, in usual form, showing service on Elmer B. Collins et al., filed August 23, 1930, omitted in printing.

[fol. 251] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

ROQUEMORE GRAVEL COMPANY, ALABAMA SAND & GRAVEL COMPANY, and DIXIE SAND & GRAVEL COMPANY, Complainants,

vs.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY, B. L. Bugg, Receiver; Atlanta & West Point Railroad Company; Atlantic Coast Line Railroad Company; Central of Georgia Railway Company; Georgia Railroad; Georgia, Florida & Alabama Railway Company; Georgia and Florida Railway, John Skelton Williams, Receiver; Gulf, Mobile and Northern Railroad Company; Illinois Central Railroad Company; Louisville and Nashville Railroad Company; Macon, Dublin & Savannah Railroad Company; Mississippi Central Railroad Company; Mobile and Ohio Railroad Company; The Nashville, Chattanooga & St. Louis Railway; New Orleans Great Northern Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Alabama Great Southern Railroad Company; New Orleans and Northeastern Railroad Company; St. Louis-San Francisco Railway Company; Seaboard Air Line Railway Company; and The Western Railway of Alabama, Defendants

[fol. 251-a] ORIGINAL COMPLAINT—Filed Dec. 2, 1925

The complaint of the above named complainants respectfully shows unto the Commission as follows:

I

Complain-ts, Roquemore Gravel Company and Alabama Sand & Gravel Company, are corporations having their principal offices in Montgomery, Alabama; and complainant, Dixie Sand & Gravel Company, is a corporation having its principal offices in Chattanooga, Tennessee. All of the complainants are engaged in the production, sale and distribution of gravel and sand from Montgomery and Chattanooga respectively to destinations throughout the States of Georgia and Mississippi.

II

The defendants above named are common carrier railroad corporations engaged in the transportation of gravel and sand and other commodities from Chattanooga and Montgomery to destinations in the States of Georgia and Mississippi and as such defendants are subject to the provisions of the Interstate Commerce Act.

III

In the effort to market successfully their production of gravel and sand in the States of Mississippi and Georgia complainants encounter competition from producers of sand [fol. 251-b] and gravel located in each of such states and from producers of crushed rock located in the State of Georgia.

IV

The intrastate movements of sand and gravel within the States of Georgia and Mississippi and the intrastate movements of crushed rock in the State of Georgia are governed by intrastate charges. The interstate rates from Montgomery and Chattanooga to destinations in the States of Georgia and Mississippi are distances considered relatively higher than such intrastate rates in the States of Georgia and Mississippi. In addition thereto within the State of Georgia the transportation charges on crushed rock are the same for equal distances as the transportation charges in Georgia applicable to gravel although the transportation characteristics surrounding the movement of gravel from Chattanooga and Montgomery into Georgia and crushed rock between points in Georgia are not substantially similar.

Complainants, therefore, respectfully allege that they, the communities of Chattanooga and Montgomery and sand and gravel therefrom are subjected to undue and unreasonable prejudice and disadvantage in favor of intrastate shippers and shipments of sand and gravel between points in the States of Mississippi and Georgia and in favor of crushed rock between points in Georgia in violation of the provisions of Section 3 of the Interstate Commerce Act.

[fols. 251-c-255] V

Complainants further allege that the interstate rates on gravel and sand from Montgomery and Chattanooga to

destinations in the States of Georgia and Mississippi are unjust and unreasonable in violation of the provisions of Section 1 of the Interstate Commerce Act.

Wherefore complainants respectfully pray that this complaint may be filed and served and after due hearing and investigation an order or orders may be made requiring the defendants to cease and desist the aforesaid violations of the Interstate Commerce Act; and that complainants may have such other and further relief as the facts to be shown unto the Commission may require.

Respectfully submitted.

Alabama Sand & Gravel Company, by John D. Roquemore, President. Roquemore Gravel Company, by J. C. Bible, Sales Manager. Dixie Sand & Gravel Company, by J. L. Griffith, Traffic Manager. Chas. E. Cotterill, Attorney for Complainants.

[fols. 255 & 255-1] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. —

In the Matter of Rates on Chert, Clay, Gravel (Washed or Unwashed), Sand (Common) Straight or Sand and Gravel Mixed, Shale, Slag (Granulated, Lump or Pulverized), Stone, Granite (Crushed), Flagging, Rubble or Stone Screenings Interstate Within the State of Georgia.

PETITION ON BEHALF OF CERTAIN GEORGIA CARRIERS

To the Interstate Commerce Commission:

Your petitioners, Atlantic Coast Line Railroad Company, Savannah & Statesboro Railroad, Green County Railroad, Georgia Northern Railway, Flint River & Northeastern Railroad, Georgia, Ashburn, Sylvester & Camilla Railway, Macon, Dublin & Savannah Railroad, Georgia, Florida & Alabama Railroad, and Tallulah Falls Railroad, hereinafter called petitioners, present this petition and re-
[fol. 255-2] spectfully represent and show unto the Commission as follows:

First

Petitioners are corporations organized and existing under the law of the respective states in which they were incorporated. Each of your petitioners has been for many years past, and is now, engaged in operating lines of railroad within the State of Georgia, and has been and is now engaged in business of transporting passengers and freight intrastate between points in the State of Georgia, and is likewise engaged and has for years past, been engaged, in transporting passengers and freight moving in interstate commerce between points in the State of Georgia, and points in other states. Each of your petitioners is a Common Carrier of passengers and freight by railroad, subject to the provisions of the Act of Congress known as the Interstate Commerce Act and the Transportation Act of 1920, and is a party to and participates in through interstate freight routes and through freight rates, including rates on sand and gravel, and articles taking the same rates, in car-loads, and tariffs applicable between points in the State of Georgia and points in other states.

Second

Petitioners further show that by Section 422 of the Transportation Act, 1920, this Honorable Commission is required [fol. 255-3] to initiate, modify, establish or adjust rates (which by the express definition of said Section includes rates, fares and charges, and all classifications, regulations and practices relating thereto), so that the carriers as a whole in each rate group which the Commission may designate, will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment earn an aggregate net railway operating income, as in said section defined, equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation; and that for the two years beginning March 1, 1920, the Commission should take as such fair return a sum equal to five-and-one-half per cent of such aggregate value but might, in its discretion, add thereto a sum not exceeding one-half of one percent of such aggregate value to make provision for the uses and purposes of said section prescribed.

It was thus made the duty of this Honorable Commission to establish such rates as would produce on all traffic, state and interstate, of such carriers, for the two years beginning March 1, 1920, an annual net railway operating income in the aggregate equal to five-and-one-half or six per cent, as the case may be, of the aggregate value of the railway property of the carriers in the group held for and used in the service of transportation.

This Honorable Commission, must, therefore, under the express requirements of the law make up and provide out [fol. 255-4] of rates on interstate traffic all of the required amount of net revenue prescribed by the Act that is not contributed by the state traffic of the carriers in the group.

Third

Petitioners show that in the latter part of April and the early part of May, 1920, applications were filed by the Railroad Companies of the United States, including petitioners, wherein this Commission was requested to increase rates, fares, and charges, so that the railroads might earn the net railway operating income provided by law. Upon the filing of these applications, hearings were had before this Honorable Commission and as a result of these hearings, this Commission promulgated, on the 29th day of July, 1920, its report and order in the cause designated on the docket of this Commission as Ex Parte 74 and styled, "In the Matter of the Applications of Carriers in Official, Southern and Western Classification Territories for Authority to Increase Rates." This report and accompanying order are respectfully asked to be made a part of this petition.

Fourth

Your petitioners further show that, as will appear at page 229 of said report, this Commission, in accordance with the provisions of the Transportation Act and for the purpose of Ex Parte 74, tentatively determined the aggre- [fol. 255-5] gate value of all the property of the carriers held for and used in the service of transportation to be $18,900,000,000. In making this tentative valuation, this Commission did not undertake to separate and did not separate property devoted to the purpose of interstate transportation from property devoted to intrastate transporta-

tion, so that the values found in the report include the property of carriers whether used in interstate or intrastate transportation.

Fifth

In its opinion in Ex Parte 74 this Commission, acting under authority of the Transportation Act, divided the United States into four groups for rate making purposes. The territorial limits of these groups are fully set out in this opinion, and need not be here repeated. The State of Georgia lies within the Southern group. The Commission found that the carriers were entitled to earn six per cent upon the aggregate value of the property in each group devoted to the service of transportation, and that, in order to earn that return, the following increase (among others) should be made in the Southern Group in all rates, fares and charges, whether applicable upon interstate or intrastate traffic:

Freight transportation rates, switching charges, and other special charges enumerated in the report were permitted to be increased 25 per cent.

[fol. 255-6] Sixth

Petitioners further show that this Commission in authorizing an increase in the rates, fares and charges for the transportation of freight and passengers, did not determine and conclude that the increases permitted and directed in Ex Parte 74 should apply only to interstate transportation, but it was determined by this Commission that the increases there allowed, if applied both to interstate and intrastate traffic, would yield no more than was necessary to permit the carriers to earn six per cent upon the value of their property held for and used in the service of transportation. In other words, there was no attempt made by this Commission to make any separation between interstate revenue and intrastate revenue, or between the expenses for handling interstate traffic and the expenses for handling intrastate traffic.

Seventh

There were present and participating in the proceedings before this Commission in Ex Parte 74 representatives of

the State Commissions, including the Georgia Public Service Commission.

Eighth

Petitioners state that, as will be seen from an examination of the report in Ex Parte 74, it was necessary for the carriers to have the stated increases in freight rates and [fol. 255-7] passenger fares and other changes in order that their net income might equal the amount provided in the Transportation Act, and if they were not permitted to increase intrastate freight rates, as well as passenger fares and other charges, in the State of Georgia in the amounts permitted by this Commission, the Railroads in the Southern Group, in which the State of Georgia was situated, would fail to earn the amount of net revenue authorized in the Transportation Act.

Petitioners further show that this Honorable Commission having in Ex Parte 74, in the performance of its duties under the Act determined the amount of net revenue required by Section 422 of the Transportation Act, 1920, and having declared that this amount should be provided by a uniform increase of rates applicable alike to interstate and intrastate traffic in the group, it was obvious that if the intrastate rates in any state were not increased to correspond with the increases authorized and made in interstate rates under the decision and order of this Commission in Ex Parte 74, the carriers in that particular group would not receive the net railway operating income which this Commission intended they should receive and to which this Commission found they were entitled, unless the deficit so produced was made good by a further increase in the rates on interstate traffic.

Ninth

Following the decision of the Commission in Ex Parte 74 [fol. 255-8] petitioners made application to the Georgia Public Service Commission for authority, among other things, to increase freight rates and charges, including rates and charges on sand and gravel, and articles taking the same rates intrastate in the State of Georgia, in the same amount and to the same extent that this Commission in Ex Pare 74 authorized increases in rates and charges for interstate transportation.

Hearing was held on such application before the Georgia Public Service Commission on August 17, 1920, with the result that the Georgia Public Service Commission on August 20, 1920, entered its order wherein and whereby the said Georgia Public Service Commission found that the increases sought by the carriers, including increases in the rates and charges on sand and gravel, and articles taking the same rates were reasonable and proper, and should be granted, with certain exceptions. The increased rates authorized by the said Georgia Public Service Commission on sand and gravel and articles taking the same rates became effective September 1, 1920, and remained in effect until July 1, 1922.

Tenth

Your petitioners further show that on or about December 1, 1921, this Commission instituted proceeding on its own motion, bearing the title Reduced Rates 1922, "In the Matter of Rates, Fares and Charges of Carriers by Railroad Subject to the Interstate Act," Docket No. 13292. [fol. 255-9] The purpose of this investigation was to determine what should be on and after March 1, 1922, a fair return upon the value of the property of carriers held for and used in the service of transportation; what was the aggregate value of such property; and what rate reductions or charges, if any, should be made in order that the carriers might earn such fair return upon the value of their property. In said proceeding, testimony was heard, arguments were had, and on May 16, 1922, this Commission filed its report in the said cause, among other things, fixed five and three-quarters per cent (5¾ per cent) as a reasonable rate of return upon the aggregate value of railway property of carriers, and recommended that a horizontal decrease of approximately ten per cent be made in all existing rates, with certain exceptions, set out fully in the report, which exceptions dealt with rates which had been voluntarily or otherwise reduced by the carriers between August 26, 1920, and May 16, 1922. So far as Southern territory was concerned this reduction was brought about by requiring the carriers to publish rates which would be twelve-and-one-half per cent higher than the rates in effect

on August 25, 1920, the date prior to the effective date of the increases allowed in Ex Parte 74 with the exceptions already noted. This recommendation of the Commission was accepted by petitioners and practically all other carriers operating in the United States and as a result of this decision effective July 1, 1922, interstate rates and intrastate rates throughout the United States were reduced in [fol. 255-10] the amounts recommended by the Commission in its said decision in Docket 13292.

Your petitioners and all other carriers in the State of Georgia, effective July 1, 1922, voluntarily reduced all intrastate rates, including the rates on sand and gravel, and articles taking the same rates, to the same basis and by the same amounts as corresponding interstate rates were reduced. The rates so established, effective July 1, 1922, on sand and gravel and articles taking the same rates intrastate in Georgia remained in effect without change until April 1, 1925.

Eleventh

By order dated July 14, 1921, the Railroad Commission of Georgia required the railroads operating in that state to file with the Commission revised class and commodity rates for the transportation of intrastate traffic within the State of Georgia, and entered upon an investigation with respect to the entire rate structure in the State of Georgia including the rates on sand and gravel and articles taking the same rates, in carloads. On February 25, 1925, after hearings, the Georgia Public Service Commission entered its report and order in that proceeding in so far as it related to rates on sand and gravel and articles taking the same rates, in carloads. By its order of February 25, 1925, the carriers operating in the State of Georgia were required to publish and make effective on or before April 1, 1925, certain rates on sand and gravel and articles taking the [fol. 255-11] same rates, in carloads, for application intrastate in the State of Georgia. A copy of the said order of the Georgia Public Service is hereto attached as Exhibit "A" and made a part of this petition.

The rates ordered established by the Georgia Public Service Commission were published by petitioners and became effective April 1, 1925, and are now being applied in accordance with the terms of said order of the Georgia Public Service Commission.

The effect of the aforesaid order of the Georgia Public Service Commission was to very substantially reduce the revenue of these petitioners on sand and gravel and articles taking the same rates moving intrastate, in carloads, between points in the State of Georgia.

Petitioners assert that intrastate rates on sand and gravel and articles taking the same rates, in carloads, in effect intrastate in Georgia prior to April 1, 1925, were unreasonably low rates and on the whole lower than the level of interstate rates applied from points in other states to points of destination in Georgia, which interstate rates were not above the level of reasonable rates.

Twelfth

The petitioners aver that the rates prescribed by the Georgia Public Service Commission in its said order of February 25, 1925, on sand and gravel and articles taking the same rates, in carloads, for intrastate application between points in the State of Georgia, and now in effect, give [fol. 255-12] an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Georgia on the one hand, and persons and localities in interstate commerce on the other hand, and are unjustly discriminatory against interstate commerce and place an undue burden on interstate commerce, in violation of Section 3 and subdivisions 3 and 4 of Section 13 of the Interstate Commerce Act as amended by Section 416 of the Transportation Act of 1920.

Petitioners further show that if the said rates on sand and gravel and articles taking the same rates so established by the Georgia Public Service Commission are allowed to remain in effect the purpose of the Interstate Commerce Act will be defeated and the result will be an undue and unreasonable advantage, preference or prejudice between persons and localities in interstate commerce on the one hand, and intrastate commerce on the other, and that the interstate commerce will be unduly, unreasonbaly and unjustly discriminated against, all of which is forbidden and declared to be unlawful by the Interstate Commerce Act.

In order that this Commission may be advised of the extent by which the rates which the Georgia Public Service Commission has required the carriers to establish on sand and gravel and articles taking the same rate, in carloads,

will operate to the prejudice and disadvantage of persons, firms, and localities in interstate commerce, your petitioners set out in exhibit B attached to and made a part of this petition a few only of the many instances in which the in-[fol. 255-13] trastate rates will give an undue and unreasonable preference and advantage to intrastate shippers and cause an undue and unreasonable prejudice against interstate shippers of these commodities.

It will be noted from this exhibit that the present rates from Norris, Wrens and Georgetown, Georgia, on these commodities are quite materially lower for like distances than the rates from Steel Creek, S. C., and Montgomery, Ala., to these destinations. It should be remembered in this connection that rates from Steel Creek, S. C., are rates that were suspended by the Commission in Investigation and Suspension Docket No. 1848 and that after full hearing, briefing and argument before the Commission they were found justified in its report, 83 I. C. C. 436. The present rates from Montgomery are practically the same for like distances as the rates from Steel Creek. Shippers of these commodities at Steel Creek and at Montgomery are in active competition for the sale of their products at the destinations shown with shippers at Georgetown, Wrens and Morris, Ga.

The disparity between the interstate rates which were found justifi*ed* by the Commission in I. & S. Docket 1848 and the intrastate rates which the Railroad Commission of Georgia has required the carriers to establish from Georgia Shipping points produce an undue and unreasonable disadvantage and discrimination against shippers of sand and gravel from Steel Creek and Montgomery, and an undue and unreasonable preference of shippers of sand and gravel located at Georgia points. There are no cir-[fol. 255-14] cumstances of transportation with which we are acquain-ed which justify lower rates from these Georgia points, for like distances, than are applied from Steel Creek and from Montgomery.

Your petitioners show that they have set out only a few examples showing manifest discrimination against interstate commerce and manifest prejudice and disadvantage to persons and localities engaged in interstate commerce in favor of intrastate commerce and persons and localities engaged in intrastate commerce. The few in-

stances above given are illustrative of and represent a situation which prevails generally as to interstate rates on sand and gravel and articles taking the same rates, from points in states other than Georgia to Georgia destinations as compared with Georgia intrastate rates on sand and gravel and articles taking the same rates prescribed by the Georgia Public Service Commission and now in effect.

Thirteenth

Your petitioners aver that the interstate rates on sand and gravel, and articles taking the same rates, in carloads, now in effect from points in Florida, South Carolina, Tennessee, Alabama, and Mississippi to points in the State of Georgia, are in all respects reasonably low rates. Petitioners further aver that the rates prescribed by the Georgia Public Service Commission on sand and gravel and [fol. 255-15] articles taking the same rates, in carloads, for intrastate application between points in Georgia, and now in effect, are unreasonably and unduly low.

Petitioners further show that the rates so prescribed by the Georgia Public Service Commission are generally materially lower than interstate rates on sand and gravel, in carloads, prescribed by this Commission after extensive hearings and investigation for application from points in South Carolina to points in Georgia and Florida.

Petitioners further show that there are no transportation conditions which warrant or justify a level of rates intrastate in Georgia lower than the level of interstate rates between points in Georgia and points in contiguous states or elsewhere in the same general territory.

Fourteenth

One of the effects of the order of the Georgia Public Service Commission and the reduced rates on sand and gravel and articles taking the same rates, in carloads, established and made effective by petitioners intrastate between points in the State of Georgia in obedience to said order, will be to greatly reduce the revenues of petitioners derived from the transportation of sand and gravel, and articles taking the same rates, in carloads, intrastate between points in Georgia.

Petitioners further show that they are advised and believe that shippers of sand and gravel located in states other than Georgia will find it extremely difficult if not [fol. 255-16] impossible to continue to ship sand and gravel and articles taking the same rates into Georgia on the present reasonably low interstate rates in competition with Georgia dealers and manufacturers who ship on the extremely and unreasonably low rates prescribed by the Georgia Public Service Commission. Georgia consumers will discontinue buying large quantities of sand and gravel and articles taking the same rates at points in other states and this tonnage which has moved in the past at reasonably low interstate rates will be supplanted by tonnage from Georgia points which will move on the unduly and unreasonably low Georgia intrastate rates which are generally materially less than the reasonable interstate rates into Georgia, thereby resulting in great loss of revenue to petitioners.

Fifteenth

Wherefore these petitioners respectfully request this Commission to enter upon an investigation as provided in Paragraph 3 of section 13 of the Interstate Commerce Act, with reference to the rates which are the subject matter of this complaint, and after such investigation to enter such order as is provided in paragraph 4 of section 13 of the Interstate Commerce Act, as will effect a removal of the undue prejudice now existing.

Respectfully submitted.
John A. Streyer, Henry Thurtell, Attorneys for Petitioners.

[fol. 255-17] Statement Showing Distances and Rates on Sand and Gravel, Carloads, in Effect prior to April 1, 1925 (Except as Noted), and Established April 1, 1925, from Norris, Ga. (Ga. R. R.), Wrens, Ga. (G. & F. Ry.), and Georgetown, Ga. (C. of Ga. Ry.), to Representative Destinations in Georgia Compared with Present Rates to Same Destinations from Steel Creek, S. C. (C. & W. C. Ry.), and Montgomery, Ala.

In Cents per Hundred Pounds

From	Norris, Ga.			Wrens, Ga.			Georgetown, Ga.			Steel Creek, S. C.		Montgomery, Ala.	
To	Miles	A	B	Miles	A	B	Miles	A	B	Miles	Present rate	Miles	Present rate
Jessup, Ga.	220	167	130	159	158	120	218	...	130	170	140	294	180
Blackshear, Ga.	250	...	140	189	...	130	188	...	120	201	144	325	...
Waycross, Ga.	245	176	140	185	162	130	177	...	120	210	149	277	171
Homerville, Ga.	250	...	140	211	...	140	203	...	130	236	153	289	167
Valdosta, Ga.	224	176	140	206	149	140	168	...	120	270	162	255	158
Ousley, Ga.	233	...	140	215	...	140	158	...	110	280	162	245	158
Quitman, Ga.	241	176	140	220	167	140	151	...	110	287	167	238	153
Dixie, Ga.	248	...	140	230	...	150	144	...	110	295	167	231	...
Boston, Ga.	249	176	140	237	...	150	136	...	110	303	167	223	153
Cairo, Ga.	252	176	140	263	...	160	139	...	110	328	...	197	144
Bainbridge, Ga.	254	176	150	285	...	160	160	...	110	351	...	175	140
Willacoochee, Ga.	206	167	130	161	140	130	129	...	100	243	158	339	176
Brookfield, Ga.	185	...	120	182	...	130	114	...	100	275	162	318	...
Tifton, Ga.	177	158	120	188	...	130	107	...	100	281	167	210	167
Ty Ty, Ga.	186	...	120	199	...	140	98	...	100	291	171	302	...
Sylvester, Ga.	175	162	130	206	...	140	86	...	100	302	171	289	167
Willingham, Ga.	194	162	130	215	...	140	81	...	100	308	171	285	...
Albany, Ga.	179	158	120	210	...	140	41	...	60	322	176	169	...
Camilla, Ga.	204	167	130	236	...	160	91	...	100	347	...	244	158
Petty, Ga.	209	...	130	140	...	150	96	...	100	343	...	239	...
Pelham, Ga.	213	167	130	244	...	150	100	...	100	339	...	236	153

A—Rates prior to April 1, 1925.

B—Rates established April 1, 1925, apply on Sand and Unwashed Gravel; washed Gravel 10 per ton higher.

Tariff Authorities: Georgia R. R. I. C. C. A-43 (G. F. O. Ry. 4987). Georgia & Florida Ry. I. & S. 439 (G. F. O. 4759) and G. & F. Ry. I. C. C. 416 (F. F.-155-11). C. & W. C. Ry. I. C. C. A-829 (G. F. O. Ry. 4707.) Agent Glenn's Montgomery-Selma Tariff 4, C. C. A-494 (G. F. O.-2232). Agent Glenn's Georgia Local & Joint Mileage Tariff 2, I. C. C. A-483 (G. F. O.-2740).

Wilmington, N. C., May 26, 1925.

[fol. 255-18] By the Georgia Public Service Commission

Dockets 15416, 15997

In re Revision of Freight Rates Between Points Within the State of Georgia

Chert, Gravel, Sand, Stone, etc.

Schedules of Commodity Rates

Issued Feb. 25th, 1925. Effective April 1st, 1925

[fol. 255-19] Paul B. Trammell, Chairman; John T. Boifeuillet, Vice-Chairman; James A. Perry, J. D. Price, Walter R. McDonald, Commissioners

Albert Collier, Secretary. E. M. Price, Rate Expert. W. E. Watkins, Special Attorney. J. Houstoun Johnston, Consulting Engineer. T. J. Freer, Official Reporter

Telephone: Main 0016

Office of the Georgia Public Service Commission, Atlanta

Files 15416, 15997

February 25th, 1925.

In re Revision of Rates Between Points in Georgia on Sand, Gravel, Crushed Stone, etc.

Upon consideration of the record in the above stated case, and of the evidence and arguments submitted at the hearings had thereon, it is,

Ordered: (1) That, effective on and after April 1st, 1925, and until the further order of this Commission, the following shall be the rules, classifications, descriptions and ratings, regulations and the maximum rates governing the movement and transportation of freight traffic provided for in this order between points wholly within the State of Georgia, and to be used and applied by each of the railroads operating within the State of Georgia, in the manner and as hereinafter directed.

Ordered: (2) That the ratings provided for in this order shall be applied to all Freight Tariff Class A and Freight Tariff Class B railroads, as designated in Class Rate Order, dated February 28th, effective May 1st, 1923.

Ordered: (3) That the specific commodity rate tables as shown in the following pages shall be applied as follows:

Rate Table No. 1. To single line application between points within this State, on each of the severally named railroads in Freight Tariff Class A.

Rate Table No. 2. To joint line application between points within this State, located on two or more of the severally named railroads in Freight Tariff Class A.

Rate Table No. 3. To joint line application between points within this State, located on one or more Freight Tariff Class A railroads, and one or more Freight Tariff Class B railroads.

Rate Table No. 4. To single line application between points within this State, located on each of the severally named railroads in Freight Tariff Class B.

Rate Table No. 5. To joint line application between points within this State, located on two or more of the severally named railroads in Freight Tariff Class B.

Ordered further: (4) That on or before the effective date of this Order, all class and commodity rates between points within this State, that are higher than the commodity rate schedules and classification ratings provided for in this order, shall be canceled, and the commodity rate schedules and classification ratings provided in this order, observed as a maximum.

Ordered further: (5) All carriers are authorized to cancel all class and commodity rates that are lower than the commodity rate schedules and classification ratings provided in this order and observe as a maximum the commodity rate schedules and classification ratings authorized herein, except that in no instance shall the rates on the commodities covered by this order be higher, between any points in Georgia, than the interstate rates contemporaneously in effect on the same Commodities between points in [fol. 255-20] Georgia and points in other states, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul.

Ordered further: (6) The Commission's Freight Rule No. 27 is hereby suspended, and superseded by Rate Tables 2, 3 and 5, in constructing joint line rates on the commodities covered by this order.

Ordered further: (7) The joint rates provided for herein are to be divided on the same basis as provided for in the Commission's Class Rate Order, dated February 28th, effective May 1st, 1923.

Ordered further: (8) That when, by the use of the schedules of rates authorized in this order rates are established between competitive points by a carrier, or carriers, whose lines form the lowest rate making route, the carrier, or carriers, forming the longer distance, or higher rate making route, are permitted to meet such competition, and to charge higher rates at intermediate points, but in no instance shall rates be charged higher than for the single or joint line scale of rates authorized herein, for the actual distance, via the route making the lowest rate, to, from, or between such intermediate points, In instances where the carriers establish between any points, lower rates than authorized herein, no higher rates shall be charged at any intermediate point, without the approval of the Commission having first been obtained.

By order of the Georgia Public Service Commission.
Albert Collier, Secretary. Paul B. Trammell, Chairman.

Index to Commodities

	Commodity group
Chert, in bulk, carload minimum weight 60,000 lbs. Rates 10c per ton less than	22
Clay, crude, in bulk, carload minimum weight 60,000 lbs. Rates 10c per ton less than	22
Gravel, (washed) in bulk, carload minimum weight 60,000 lbs.	22
Gravel, (not washed) or sand and clay gravel, in bulk, carload minimum weight 60,000 lbs. Rates 10c per ton less than	22
Sand, (common) straight, or sand and gravel mixed, in bulk, carload minimum weight 60,000 lbs. Rates 10c per ton less than	22

	Commodity group
Shale, in bulk, carload minimum weight 60,000 lbs. Rates 10c per ton less than	22
Slag, granulated, lump or pulverized, in packages or in bulk, carload minimum weight 60,000 lbs.	22
Stone, Granite, Crushed, Flagging, Rubble or Stone Screenings, in bulk, in straight or mixed carload minimum weight 60,000 lbs.	22

[fols. 255-21 & 256] Commodity Rates

Rates in Cents per Hundred Pounds

Commodity Group No. 22

Rate Tables Distance	1	2	3	4	5
5 Miles & Under	2½			3	
10 " & Over 5	2½	3	3½	3	3½
15 " " 10	2½	3	3½	3	3½
20 " " 15	3	3½	4	3½	4
25 " " 20	3	3½	4	3½	4
30 " " 25	3	3½	4	3½	4
35 " " 30	3½	4	4½	4	4½
40 " " 35	3½	4	4½	4	4½
45 " " 40	3½	4	4½	4	4½
50 " " 45	4	4½	5	4½	5
55 " " 50	4	4½	5	4½	5
60 " " 55	4	4½	5	4½	5
65 " " 60	4½	5	5½	5	5½
70 " " 65	4½	5	5½	5	5½
75 " " 70	4½	5	5½	5	5½
80 " " 75	4½	5	5½	5	5½
85 " " 80	5	5½	6	5½	6
90 " " 85	5	5½	6	5½	6
95 " " 90	5	5½	6	5½	6
100 " " 95	5	5½	6	5½	6
110 " " 100	5	5½	6	6	6
120 " " 110	5½	5½	6	6	6
130 " " 120	5½	5½	6	6	6
140 " " 130	6	6	6½	6½	6½
150 " " 140	6	6	6½	6½	6½
160 " " 150	6	6	6½	6½	6½

Rate Tables Distance		1	2	3	4	5
170	Miles & Over 160	6½	6½	7	7	7
180	" " 170	6½	6½	7	7	7
190	" " 180	6½	6½	7	7	7
200	" " 190	7	7	7½	7½	7½
210	" " 200	7	7	7½	7½	7½
220	" " 210	7	7	7½	7½	7½
240	" " 220	7½	7½	8	8	8
260	" " 240	7½	7½	8	8	8
280	" " 260	8	8	8½	8½	8½
300	" " 280	8	8	8½	8½	8½
320	" " 300	8	8	8½	8½	8½
340	" " 320	8½	8½	9	9	9
360	" " 340	8½	8½	9	9	9
380	" " 360	8½	8½	9	9	9
400	" " 380	9	9	9½	9½	9½
420	" " 400	9	9	9½	9½	9½
440	" " 420	9	9	9½	9½	9½
460	" " 440	9½	9½	10	10	10

[fol. 257] BEFORE INTERSTATE COMMERCE COMMISSION

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

CORRECTED ORDER—Oct. 5. 1925

It appearing, That a petition has been filed on behalf of certain steam railroads operating in the state of Georgia averring that the Georgia Public Service Commission by order promulgated on the 25th day of February, 1925, required petitioners to establish rates on chert, clay, sand and gravel within said state which are less than those permitted or required to be established by this Commission for interstate traffic;

It further appearing, That said petitioners allege that the observance by themselves of said order of the Georgia Public Service Commission will cause and result in undue and unreasonable preference and advantage to intrastate

commerce, to the undue and unreasonable prejudice and disadvantage of interstate and will result in unjust and unreasonable discrimination against interstate Commerce;

And it further appearing, That by said petition there have been brought in issue rates imposed by the authority of the state of Georgia:

It is ordered, (1) That an investigation be, and it is hereby, instituted to determine whether the rates on chert, clay, sand and gravel required by the Georgia Public Service Commission to be maintained by said railroads, cause or will cause and undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

(2) That all railroads subject to our jurisdiction operating within said state of Georgia be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the state of Georgia be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Georgia, at Atlanta, Ga., and to the Georgia Public Service Commission, at Atlanta, Ga.

(3) That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C.

(4) That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fols. 258-269] BEFORE INTERSTATE COMMERCE COMMISSION

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

SUPPLEMENTAL ORDER—Jan. 4, 1926

The Commission having under further consideration the petition filed on behalf of certain steam railroads operating in the State of Georgia upon which petition the order of the Commission entered in this proceeding on the 5th day of October, 1925, was based.

It is ordered, That the said order of October 5, 1925, be, and it is hereby, amended so as to include within its terms an investigation to determine whether the rates on chert, clay, gravel (washed or unwashed), sand (common) straight, or sand and gravel mixed, shale, slag (granulated, lump or pulverized), stone, granite (crushed), flagging, rubble or stone screenings, required by the Georgia Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

(2) That all railroads subject to our jurisdiction operating within said state of Georgia be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the state of Georgia be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Georgia, at Atlanta, Ga., and to the Georgia Public Service Commission, at Atlanta, Ga.

(3) That notice of this proceeding be given to the public by posting a copy of this order in the office of the Secretary of the Commission, at Washington, D. C.

(4) That this proceeding be assigned for hearing February 15, 1926, ten o'clock a. m. at Atlanta Biltmore Hotel, Atlanta, Georgia, before Commissioner Lewis.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 270-1] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket 17517 et al.

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia (and Consolidated Cases)

MOTION FOR ENTRY OF MINIMUM-RATE ORDER—Filed Sept. 15, 1927

Come now the complainants in Docket Nos. 17689, 17699 and Sub-No. 1, 17763, 17764 and Sub-No. 1, and respectfully show unto the Commission as follows:

I

Under date of January 21, 1927, this Commission in its decision in these proceedings (reported in Volume 122, I. C. C. beginning with page 133) dealt both generally and specifically with the matter of Southern freight rates on both fine and coarse aggregate.

[fol. 270-2] With particular reference to the matter of rates to Birmingham, Alabama, from points in the Junction City District of Georgia, the following was said:

We have heretofore discussed the 79-cent rate maintained by the Atlanta, Birmingham & Atlantic and the Central of Georgia on sand from points in the Junction City, Ga., district mentioned in No. 17689, to Birmingham. It is admitted to be a relatively low rate and, as has been stated, is maintained in order that the Junction City district shippers may ship sand to Birmingham on a parity with Montgomery shippers. The rates between points in Alabama

are not in issue in these proceedings and the above-named carriers serving the Junction City district and the shippers there located strongly urge that we do not disturb the present parity of rates, at least until the rates from Montgomery to Birmingham are revised. To do so, they assert, will mean serious loss to the Junction City district shippers as well as the carriers. We are impressed with this contention and in view of the situation disclosed we find that we are not here justified in disturbing the present adjustment. Under the circumstances disclosed, No. 17689 will be dismissed without prejudice to the right of complainants to seek a reopening of same in the event that as a result of these proceedings the intrastate rates between points in Alabama are revised to the level herein approved for interstate application and the Atlanta, Birmingham & Atlantic and the Central of Georgia do not follow with a like revision of the interstate rates from the Junction City district to Birmingham.

[fol. 270-3]

II

Under date of August 18 the Alabama Public Service Commission in its Docket No. 4136, rendered a decision and order which in general adopted for intrastate application within Alabama the mileage scale of this Commission so prescribed in Docket No. 17517 and consolidated cases. But in such decision and order of the Alabama Public Service Commission there was temporarily withheld authority to increase from the Montgomery District to Birmingham the charges now in effect, such exception being in terms controlled by the fact that the Central of Georgia Railway and the Atlanta, Birmingham & Coast Railroad were then maintaining to Birmingham from the Junction City District in Georgia a rate on sand no higher than the existing rate from the Montgomery District to Birmingham, notwithstanding the very much longer hauls from points in the Junction City District.

III

Under date of September 2 the Alabama Public Service Commission officially transmitted to this Commission the following communication:

Referring to our decision and order of August 18, 1927, in the matter of intrastate rates on chert, gravel, sand, slag

and stone, carloads, between points in Alabama, copy of which you have received:

[fol. 270-4] It was necessary, in order to prevent serious injury to Alabama sand shippers, to withhold any revision of the specific sand rates from Alabama pits to the Birmingham district until a corresponding revision on the scale basis is made from pits in the Junction City, Georgia, district; but, in order to hasten the correction of this troublesome situation, this is to advise you that this Commission will authorize and require a revision to the scale basis of the sand rates into the Birmingham district excepted from the decision and order above mentioned to become effective concurrently with a revision to the scale basis of the rates from the Junction City, Georgia, district to the Birmingham district, if your Commission sees fit to make an order to that effect.

IV

On or about September 1, 1927, there were filed with this Commission, to become effective October 1st, 1927, tariffs containing individual and joint rates on fine and coarse aggregates covering the larger part of interstate traffic in Southern territory, except movements into Florida and within the Mississippi Valley. But in such tariffs the Central of Georgia Railway Company and the Atlanta, Birmingham & Coast Railroad Company excepted from the operation of such revision the rates on sand from points in the Junction City district to Birmingham.

[fol. 270-5] V

In the original hearing, in the original briefs, and in the oral argument all the essential facts were disclosed to this Commission and all the considerations affecting the matter were presented. Now that the Alabama Commission has removed the only obstacle which this Commission found in the way of a minimum rate order from points in the Junction City District to Birmingham, there is no circumstance or occasion for any further delay, or reason for withholding the entry of such minimum rate order and without any further hearing.

VI

Movants also respectfully point out that effective October 1 the entire interstate rate structure in Southern territory on coarse and fine aggregates will uniformly be on the basis of the scale heretofore prescribed by this Commission with the exception of rates into Florida and over certain railroads wholly within the so-called Mississippi Valley; that likewise such scale is already determined for application wholly within the States of North Carolina, South Carolina and within Alabama, with the temporary exception of rates from Montgomery to Birmingham; that proceedings are pending before the Georgia State Commission in which the railroads are seeking authority to make such scale effective therein; and that unless this Commission promptly enters a minimum rate order compelling such [fols. 270-6-281] scale to be charged from points in the Junction City District to Birmingham, the effect would necessarily be a rapid disintegration of the entire scheme of uniformity presupposed by this Commission in establishing and prescribing such scale.

VII

The Atlanta, Birmingham & Coast Railroad Company is now an operating subsidiary of the Atlantic Coast Line Railroad Company, having formerly been an independent railroad known as the Atlanta, Birmingham & Atlantic.

Wherefore it is respectfully prayed that the above-entitled proceedings be reopened for entry of an order or orders commanding and requiring the Central of Georgia Railway Company and the Atlanta, Birmingham & Coast Railroad Company to establish within not more than thirty days thereafter from points in the Junction City district to points in the Birmingham district such rates as individually shall not be less than those contained and prescribed in the so-called Southeastern mileage scale appearing in the decision of these cases under date of January 21, 1927.

Respectfully submitted.

Chas. E. Cotterill, Attorneys for Movants, Suite 505 Grant Bldg., Atlanta, Ga.

[fol. 281-1] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

SUPPLEMENTAL PETITION ON BEHALF OF RESPONDENT CARRIERS OPERATING IN THE STATE OF GEORGIA

Come now the Atlantic Coast Line Railroad Company, Southern Railway Company, Seaboard Air Line Railway Company, Louisville & Nashville Railroad Company, Central of Georgia Railway Company, Atlanta & West Point Railroad Company, Georgia Railroad, Nashville, Chattanooga & St. Louis Railway, and Atlanta, Birmingham & Coast Railroad Company, hereinafter referred to as petitioners, and respectfully show to the Commission as follows:

[fol. 281-2] I

This petition is filed on behalf of the above-named petitioners, as well as on behalf of all other carriers by steam railroad operating in the State of Georgia, respondents in this proceeding under the Commission's order of investigation dated October 5, 1925, as amended by supplemental order dated January 4, 1926.

II

Petitioners show that in said order of investigation dated October 5, 1925, it was recited that a petition had been filed on behalf of certain steam railroads operating in the state of Georgia, averring that the Georgia Public Service Commission, by order promulgated on the 25th day of February, 1925, had required petitioners to establish rates on chert, clay, sand and gravel within said state which are less than those permitted or required to be established by this Commission for interstate traffic; that said petitioners alleged that the observance by themselves of said order of the Georgia Public Service Commission would cause and result in undue and unreasonable preference and advantage to

intrastate commerce, to the undue and unreasonable prejudice and disadvantage of interstate commerce and would result in unjust and unreasonable discrimination against interstate commerce; and that it was accordingly ordered by this Commission, among other things, as follows:

[fol. 281-3] "It is ordered, (1) That an investigation be, and it is hereby, instituted to determine whether the rates on chert, clay, sand and gravel required by the Georgia Public Service Commission to be maintained by said railroads, cause or will cause an undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

"(2) That all railroads subject to our jurisdiction operating within said state of Georgia be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the state of Georgia be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Georgia, at Atlanta, Ga., and to the Georgia Public Service Commission, at Atlanta, Ga."

By the supplemental order dated January 4, 1926, it was further ordered as follows:

"It is ordered, That the said order of October 5, 1925, be, and it is hereby, amended so as to include within its terms [fol. 281-4] an investigation to determine whether the rates on chert, clay, gravel (washed or unwashed), sand (common) straight, or sand and gravel mixed, shale, slag (granulated, lump or pulverized), stone, granite (crushed), flagging, rubble or stone screenings, required by the Georgia Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable ad-

vantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners in order to remove such advantage preference, prejudice or discrimination, if any, as may be found to exist."

III

That pursuant to the aforesaid orders, and after due notice given in accordance therewith, hearings were thereafter held at which time there were consolidated and heard with this proceeding various formal complaints alleging, among other things, undue discrimination against interstate shippers located at Montgomery, Ala., Chattanooga, Tenn., and other places, and undue preference in favor of intrastate shippers within the state of Georgia, said complaints being more fully described in the Commission's report herein dated January 21, 1927, 122 I. C. C. 133. As the [fol. 281-5] result of said hearings the Commission found and stated in its report of January 21, 1927, that the rates maintained by the respondents herein, as well as by the defendants in the formal complaint cases referred to, for the interstate transportation of sand, gravel (washed or unwashed), clay, gravel, crushed stone and slag, in straight or mixed carloads, between points in the state of Georgia and between points in the state of Georgia and points in other states in Southern territory, except Florida, were and for the future will be unreasonable to the extent that they exceed certain distance scales of single-line and joint-line rates as set forth in said report at page 166; except that when the transportation is in whole or in part over either of the so-called short lines, shown in Appendix B to said report, the rates were found to be unreasonable to the extent that they exceed the aforesaid distance scales plus an arbitrary of 25 cents per net ton, which latter is to accrue solely to the short line (122 I. C. C. 166). By its order accompanying said report, the respondents were ordered and directed to make effective the rates thus found reasonable

for interstate application on or before March 2, 1927, upon appropriate notice to the Commission and to the general public as therein defined.

Thereafter, by order dated March 7, 1927, the proceeding was reopened for further hearing solely in respect to interstate rates to and from points in Florida. Further hearings were thereupon held, and thereafter under date of March 5, 1928, the Commission issued its report and order [fol. 281-6] on further hearing, wherein there were prescribed for interstate application between points in the state of Georgia and points in Florida south of the Seaboard Air Line Railway from Jacksonville to River Junction rates which shall not exceed those based on the scales set forth in Table A of the original report herein (122 I. C. C. 133), applied to the entire distance plus arbitraries determined by the scale set forth in Appendix B to said supplemental report for that part of the haul south of the line of the Seaboard Air Line Railway from Jacksonville to River Junction, Fla. It was further provided that where the transportation is in whole or in part over either of the so-called respondent short lines, set forth in Appendix C to the report herein, except such as may be under common control and management of a standard line, rates shall not exceed those prescribed plus an arbitrary not in excess of 25 cents per ton of 2,000 pounds, such arbitrary to accrue solely to the short line. The rates prescribed in said order on further hearing were required to be established on or before July 2, 1928.

IV

Petitioners state that rates arrived at upon basis of the distance scales prescribed and ordered in the said orders of this Commission, dated January 21, 1927, and March 5, 1928, respectively, have been made effective by all carriers respondents herein for interstate application over their [fol. 281-7] respective lines between all points in the state of Georgia, on the one hand, and all points in other states in Southern territory, including Florida, on the other, and the said interstate rates so prescribed by this Commission have since been continued in effect and are now in effect.

V

In the report dated January 21, 1927, the Commission described and set forth such changes in rates, both intrastate within Georgia and interstate to Georgia, as had been brought about by the order of the Georgia Public Service Commission dated February 25, 1925. It was further said in this report:

"Considering the results brought about by this order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance scale of rates for application alike to the interstate transportation of all of the commodities here considered. There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any order in No. 17517 for the [fol. 281-8] future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved" (122 I. C. C. p. 169).

Following the issuance of this Commission's report and order, dated January 21, 1927, the Georgia Public Service Commission was petitioned on behalf of all railroads operating in the state of Georgia to authorize the establishment for intrastate application within said state of the same distance scales that had been approved and prescribed by this Commission for interstate application to and from points in the state of Georgia. Hearings were thereafter held before the Georgia Public Service Commission and thereafter, under date of March 13, 1928, that Commission made and promulgated an order directing the establishment, effective on and after May 1, 1928, of revised scales of rates for intrastate application within the

state of Georgia. A true copy of said order is attached hereto and made a part hereof marked Exhibit A.

VI

Petitioners aver that by the aforesaid order dated March 13, 1928, the Georgia Public Service Commission has not authorized such revisions as are necessary to bring the [fol. 281-9] intrastate rates within that state into harmony with the interstate adjustment approved and ordered by this Commission. On the contrary, the rates prescribed under said order of the Georgia Public Service Commission, to become effective May 1, 1928, for intrastate application in Georgia, are in many instances widely at variance with, and lower than, the rates for like distances as prescribed by this Commission and now in effect for interstate application, as will be illustrated by the following table:

[fol. 281-10] Statement Showing Trunk Line Scales Prescribed by the I. C. C. in Docket 17517 and by the Georgia Public Service Commission in Its Order of March 13th, 1928, on Sand, Gravel, Crushed Stone, Slag, and Other Roadway Building Materials

In Cents per Ton, 2,000 Pounds

	Single line			Joint line		
Miles	I. C. C. Docket 17517	G. P. S. C. Order 3-13-28	Differences	I. C. C. Docket 17517	G. P. S. C. Order 3-13-28	Differences
10	50	50	....	65	50	—15
20	55	55	....	70	55	—15
30	60	60	....	75	60	—15
40	70	70	....	85	70	—15
50	80	70	—10	95	70	—25
60	80	80	....	95	80	—15
70	90	80	—10	105	80	—25
80	90	90	....	105	90	—15
90	100	90	—10	115	90	—25
100	100	100	....	115	100	—15
110	110	100	—10	125	100	—25
125	110	110	....	125	110	—15
130	120	110	—10	135	110	—25
150	120	120	....	135	120	—15

Miles	Single line			Joint line		
	I. C. C. Docket 17517	G. P. S. C. Order 3-13-28	Differences	I. C. C. Docket 17517	G. P. S. C. Order 3-13-28	Differences
160	130	120	—10	140	120	—20
175	130	130	....	140	130	—10
190	135	130	— 5	145	130	—15
200	135	140	+ 5	145	140	— 5
220	140	140	....	150	140	—10
230	140	150	+10	150	150	....
250	150	150	....	160	150	—10
260	150	160	+10	160	160	....
280	160	160	....	170	160	—10
290	160	170	+10	170	170	....
320	165	170	+ 5	175	170	— 5
360	175	180	+ 5	180	180	....
400	180	190	+10	185	190	+ 5
440	195	200	+ 5	200	200	....
460	205	210	+ 5	210	210	....

[fol. 281-11] It will be observed from this table that for single line hauls over trunk lines the Georgia Commission's scale is lower in many instances than the Docket No. 17517 interstate scale for distances up to 200 miles; whereas for distances 200 miles and over the Georgia Commission's scale is generally slightly higher than the interstate scale. For joint-line hauls over trunk lines the prescribed Georgia scale is on a very substantially lower general level than the prescribed interstate rates for joint hauls.

For all distances, both single and joint hauls, over short lines and for all distances, for joint hauls between trunk lines and short hauls, the rates prescribed by the Georgia Commission are lower than the interstate rates for like movements under the Docket No. 17517 scales.

As further illustrative of the differences between the intrastate rates from representative shipping points in Georgia, on the one hand, as contrasted with the interstate rates into Georgia from representative shipping points in other states, on the other, there are attached hereto and made a

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— Georgia Public Service Commission Scale lower than 17517 Scale.

+ Georgia Public Service Commission Scale higher than 17517 Scale.

part hereof marked Exhibits B, C, D and E, respectively, tables comparing the rates prescribed by the Georgia Commission from such shipping points as Norris, Lithonia, Howard, Junction City and Elberton, Ga., with the interstate rates applicable to points in Georgia from such representative shipping points in other states as Columbia and Steel Creek, S. C., Montgomery and Jacksons Lake, Ala., and Knoxville and Chattanooga, Tenn.

[fol. 281-12] Petitioners state that the foregoing examples are intended merely to be illustrative, and in this connection they ask reference to the report of January 21, 1927 herein (122 I. C. C. at page 137) wherein are set forth numerous points of production in Georgia, and wherein reference is made also to the large movement of these commodities into Georgia from points in other states in competition with the Georgia producers.

VII

Petitioners aver that, as stated in the said report of January 21, 1927, there are no transportation reasons for the maintenance of a different basis of intrastate rates on these commodities within Georgia from that found reasonable by this Commission for interstate transportation. Petitioners further call attention to the fact that throughout said report it appears that in determining and arriving at the level of the rates prescribed for interstate application, this Commission had before it and considered the then prevailing intrastate rates in Georgia, the volume and extent of the movement under these rates, as well as the interstate rates, and the general effect upon the revenues of the respondent carriers if the prescribed scales should be adopted alike on interstate and intrastate traffic in Georgia. From the language of the report petitioners further understand that in adopting the prescribed interstate scales it was the expecta-
[fol. 281-13] tion of the Commission that these scales would be made applicable upon the intrastate traffic in Georgia, as well as upon the interstate traffic moving from, to or through said state.

VIII

Petitioners aver that the establishment of the rates ordered by the Georgia Public Service Commission, by its

order dated March 13, 1928, which rates petitioners are compelled to make effective not later than May 1, 1928, will not accomplish the intent and purpose of their original petition upon basis of which this Commission issued its order of investigation herein, or of said order of investigation, or of this Commission's reports and orders dated January 21, 1927, and March 5, 1928. Petitioners expressly aver, on the contrary, that the establishment of the said rates prescribed by the Georgia Public Service Commission causes and will continue to cause an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Georgia, on the one hand, and interstate and foreign commerce, on the other hand, and an undue, unreasonable and unjust discrimination against interstate and foreign commerce, and an undue burden upon such interstate and foreign commerce (arising particularly by reason of the failure of carriers operating in Georgia to earn upon this traffic in intrastate movement the revenues to which they are rightfully entitled) all of which is in violation of the Interstate Com- [fol. 281-14] merce Act, as amended, particularly sections 3 and 13 of said Act.

Wherefore petitioners pray that this proceeding may be reopened and a further investigation held by this Commission with reference particularly to the rates prescribed by the Georgia Public Service Commission in its order dated March 13, 1928, and that after such further hearing or hearings as this Commission may direct an order be entered herein by this Commission declaring the rates so ordered by the Georgia Public Service Commission to be unlawful, and to cause an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate and foreign commerce, on the other, and an undue, unreasonable and unjust discrimination against and burden upon said interstate and foreign commerce, and that there be taken in the premises all such further proceedings and that there be entered all such further order or orders as may be necessary to remove such advantage, preference, prejudice or discrimination as set forth in this petition, and as

may be shown as the result of such further investigation as may be ordered by the Commission.

Respectfully submitted.

Edward D. Mohr, H. L. Walker, Frank W. Gwathmey, Attorneys for Petitioners.

April 12, 1928.

[fol. 281-15] EXHIBIT A

GEORGIA PUBLIC SERVICE COMMISSION, ATLANTA

File 16384

March 13th, 1928.

Petition—Charles Barham, Chairman, Representing all Carriers Members Southern Freight Association and Petition—Southern Railway for Revision of Rates on Chert, Sand, Gravel, Slag, and Crushed Stone Between Points in Georgia

By order, dated February 25th, 1925, effective April 1st, 1925, the Commission approved the general revision of all rates on chert, gravel, sand, stone, etc., between points in Georgia, Section 5 of this Order making the following provision:

"Ordered further: (5) All carriers are authorized to cancel all class and commodity rates that are lower than the commodity rate schedules and classification ratings provided in this Order and observe as a maximum the commodity rate schedules and classification ratings authorized herein, except that in no instance shall the rates on the commodities covered by this Order be higher, between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other States, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul."

[fol. 281-16] The effect of the above stated Order was to increase very materially the rates on these materials between points in Georgia where the preponderance of the movement was taking place, and in order for the carriers to take advantage of the increased rates approved, and com-

ply with Section 5, it was necessary that they increase many of the then existing interstate rates from points in other States to points in Georgia. Carriers submitted a petition to the Commission for suspension of the effective date of its Order on the grounds that they did not have sufficient time to make the necessary revision of the interstate rates to bring them in line with the intrastate rates approved, whereupon we suspended the application of Section 5 until August 1st, 1925.

Certain Georgia carriers filed formal complaint with the Interstate Commerce Commission against the Georgia intrastate rates, alleging discrimination under Section 13 of the Interstate Commerce Act, this complaint being followed by complainants from certain shipping interests in Alabama and Tennessee, and as a result the Interstate Commerce Commission by its Order, Docket 17517, et al., required all carriers in Georgia to become parties to the proceeding for the purpose of determining whether or not the Georgia rates caused undue discrimination against interstate commerce. The investigation of the Interstate Commerce Commission resulted in its Order dated January 21st, 1927, 122 I. C. C. 133. The carriers' petition, which we now have before us, is for approval of the rates prescribed by the Interstate Commerce Commission in its Docket 17517, et al., 122 I. C. C. 133. At pages 169 and 170, the Interstate Commerce Commission stated:

[fol. 281-17] "The changes in rates both intrastate within Georgia and interstate to Georgia brought about by the Georgia Commission's Order of February 25, 1925, have been fully discussed. We have been impressed with what appears to us to have been the broad-minded attitude taken by the Georgia Commission when it undertook the revision of these rates which resulted in its Order of February 25, 1925. This order as we have seen resulted in raising many depressed intrastate rates applying between important producing and consuming points, and subsequently had the effect of bringing about substantial increases in important depressed interstate rates. Considering the results brought about by this Order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance

scale of rates for application alike to the interstate transportation of all of the commodities here considered. There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia Commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any Order in No. 17517 for the future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia Commission will cooperate in authorizing such revisions as [fol. 281-18] may be necessary to bring their rates into harmony with the interstate adjustment herein approved."

We are in accord with the views of the Interstate Commerce Commission that the intrastate rates should not cause undue discrimination against interstate commerce, neither should interstate rates result in undue discrimination against intrastate commerce, and with this end in view, it is the purpose of this Commission to prescribe such rates as will permit of free movement and competition both inter and intrastate.

The rates which we prescribed on sand, unwashed gravel and chert, effective April 1st, 1925, were slightly lower than the rates which we approved on washed gravel, crushed stone and slag. However, the rates which were prescribed by the Interstate Commerce Commission in its Docket 17517 provide for the same rates on all these commodities, the general level of the single line rates being approximately the same as the rates which we prescribed on crushed stone, slag and washed gravel. The rates which we prescribed provided for a joint line differential for hauls over two or more lines for distances under 100 miles, whereas the rates prescribed by the Interstate Commerce Commission in Docket 17517 provide for a joint line differential for all distances under 480 miles.

The investigation which we have made shows very keen competition between the producers of all these materials at the principal markets, both inter and intrastate, the producers in Georgia coming in direct competition with the producers in Alabama, Tennessee and South Carolina. In

our opinion, to approve the gradation of the scale prescribed by the Interstate Commerce Commission would [fol. 281-19] work great injury and damage to shippers and carriers on Georgia intrastate traffic, and for that reason we are prescribing a revised scale, in order that all interests may be preserved.

In Southern Class Rate Investigation, 113 I. C. C. 200, Rates on Fertilizers and Fertilizer Material between Points in Southeastern Territory I. C. C. Docket 16295, Southern Cement Rates I. C. C. 15806 and Georgia Peach Growers' Exchange, et al., Docket 16462, the Interstate Commerce Commission did not provide for a differential to be added for joint line movement over two or more lines. It is our opinion that the principles, with regard to joint line rates, as laid down by the Interstate Commere Commission in these cases are entirely proper, and it is our conclusion that this principle would prevail in this case.

Should we approve the joint line differentials for application intrastate in Georgia which have been approved by the Interstate Commerce Commission for interstate application in Docket 17517, it would result in discrimination between the producers of these materials within the State of Georgia, and would place the producers in Georgia at a great disadvantage with their competitors in the States of Alabama and Tennessee, this condition being brought about on account of the location of the producing plants in Georgia, and the necessity for joint line movement to points of consumption that are reached by single line movement from producing points in other States. The rates which we are approving in the following Order, in our opinion, are just and reasonable, and will not be preferential to Georgia producers, or result in undue discrimination [fol. 281-20] against interstate producers. It is, therefore,

Ordered: (1) That effective on and after May 1st, 1928, and until the further Order of this Commission, the rates shown in Appendix A, attached hereto, and made a part of this Order, shall be the maximum rates to be charged by Freight Tariff Class "A" and Freight Tariff Class "B" railroads between points wholly within the State of Georgia, and to be used and applied by each of the railroads operating within the State of Georgia, in the manner and as herein after directed.

Ordered further: (2) That the ratings provided for in this Order shall be applied to all Freight Tariff Class "A" and Freight Tariff Class "B" railroads, as designated in Appendix B, attached hereto, and made a part hereof.

Ordered further: (3) That the Rate Tables, as shown in Appendix A, shall be applied as follows:

Rate Table No. 1. To single line application between points within this State, on each of the severally named railroads in Freight Tariff Class "A".

Rate Table No. 2. To joint line application between points within this State, located on two or more of the severally named railroads in Freight Tariff Class "A."

Rate Table No. 3. To joint line application between points located within this State, located on one or more Freight Tariff Class "A" railroads, and one or more Freight Tariff Class "B" railroads. Also between points located on one or more Freight Tariff Class "A" railroads, when the short line distance is constructed in connection with a Freight Tariff Class "B" railroad, and the rate is lower than provided for in the application of Rate Table [fol. 281-21] No. 1 or No. 2. Also between points on one or more Freight Tariff Class "B" railroads, when the short line distance is constructed in connection with a Freight Tariff Class "A" railroad, and the rate is lower than provided for in the application of Rate Tables No. 4 or No. 5.

Rate Table No. 4. To single line application between points within this State, on each of the severally named railroads in Freight Tariff Class "B."

Rate Table No. 5. To joint line application between points within this State, located on one or more of the severally named railroads in Freight Tariff Class "B."

Ordered further: (4) That on or before the effective date of this Order, all class and commodity rates between points within this State that are higher than the rate schedules and classification ratings provided for in this Order shall be cancelled, and the rate schedules and classification ratings provided in this Order be observed as a maximum.

Ordered further: (5) All carriers are authorized to cancel all rates on the commodities herein provided for that are lower than the rate schedules and classification ratings

provided in this Order and observe as a maximum the rate schedules and classification ratings authorized herein except that in no instance shall the rates on the commodities covered by this Order be higher, between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other States, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul.

[fol. 281-22] Ordered further: (6) The Commission's Freight Rule No. 27 is hereby suspended, and superseded by Rate Tables 2, 3 and 5, in constructing joint line rates on the commodities covered by this Order.

Ordered further: (7)

(1) Joint rates between Freight Tariff Class "A" railroads, shall be divided on percentages arrived at by using the local rate of each line to and from the Junction or transfer point as factors:

(2) Joint rates between Freight Tariff Class "A" and Freight Tariff Class "B" railroads shall be divided by allowing the Freight Tariff Class "A" railroad the same revenue or proportion of the joint rate as it would receive in connection with a Freight Tariff Class "A" road, the remainder of the joint rate to accrue to the Freight Tariff Class "B" road or roads; Except, that where the joint rate is made by use of the Freight Tariff Class "B" Scale and traffic is handled jointly by Freight Tariff Class "A" and Freight Tariff Class "B" roads, the Freight Tariff Class "B" road shall receive the same revenue or proportion of the joint rate as if the traffic had been handled jointly by Freight Tariff Class "B" roads, the remainder of the jont rate to accrue to the Freight Tariff Class "A" road or roads.

(3) Joint rates between Freight Tariff Class "B" roads shall be divided in the same manner as provided for Freight Tariff Class "A" roads.

(4) The basis for the division of rates provided for herein is not intended to prevent carriers from agreeing

among themselves to the division of joint rates on any [fol. 281-23] other basis that may be satisfactory to all parties concerned.

Ordered further: (8) That when, by the use of the schedules of rates authorized in this Order, rates are established between competitive points by a carrier or carriers, whose lines form the lowest rate making route, the carrier or carriers forming the longer distance, or higher rate making route, are permitted to meet such competition, and to charge higher rates at intermediate points, but in no instance shall rates be charged higher than for the single or joint line scale of rates authorized herein, for the actual distance, via the route making the lowest rate to, from, or between such intermediate points. In instances where the carriers establish between any points lower rates than authorized herein, no higher rates shall be charged at any intermediate point, without the approval of the Commission having first been obtained.

By order of the Georgia Public Service Commission.
(Signed) Robt. N. Springfield, Secretary. James A. Perry, Chairman.

[fol. 281-24] Commodity Group No. 22 A

Maximum rates to be applied on chert gravel (sand or clay gravel, washed or unwashed), sand, slag (granulated, lump or pulverized in packages or in bulk), crushed stone, broken stone, rubble stone, stone screenings, stone flagging, carload, minimum weight to be charged for 80,000 pounds, excess in proportion, except where a car of less than 80,000 pounds' capacity is furnished the marked capacity of the car shall be charged for.

(Rates in Centers per Ton 2,000 Pounds)

Rate tables, Distances	1 & 2	3	4 & 5
5 Miles and Under	50	60	60
10 Miles and Over 5	50	60	60
15 Miles and Over 10	55	65	65
20 Miles and Over 15	55	65	65
25 Miles and Over 20	60	70	70
30 Miles and Over 25	60	70	70
35 Miles and Over 30	70	80	80

Rate tables, Distances	1 & 2	3	4 & 5
40 Miles and Over 35	70	80	80
45 Miles and Over 40	70	80	80
50 Miles and Over 45	70	80	80
55 Miles and Over 50	80	90	90
60 Miles and Over 55	80	90	90
65 Miles and Over 60	80	90	90
70 Miles and Over 65	80	90	90
75 Miles and Over 70	90	100	100
80 Miles and Over 75	90	100	100
85 Miles and Over 80	90	100	100
90 Miles and Over 85	90	100	100
95 Miles and Over 90	100	110	110
100 Miles and Over 95	100	110	110
110 Miles and Over 100	100	110	110
120 Miles and Over 110	110	120	120
130 Miles and Over 120	110	120	120
140 Miles and Over 130	120	130	130
150 Miles and Over 140	120	130	130
160 Miles and Over 150	120	130	130
170 Miles and Over 160	130	140	140
180 Miles and Over 170	130	140	140
190 Miles and Over 180	130	140	140
200 Miles and Over 190	140	150	150
210 Miles and Over 200	140	150	150
220 Miles and Over 210	140	150	150
230 Miles and Over 220	150	160	160
240 Miles and Over 230	150	160	160
250 Miles and Over 240	150	160	160
260 Miles and Over 250	160	170	170
270 Miles and Over 260	160	170	170
280 Miles and Over 270	160	170	170
290 Miles and Over 280	170	180	180
300 Miles and Over 290	170	180	180
320 Miles and Over 300	170	180	180
340 Miles and Over 320	180	190	190
360 Miles and Over 340	180	190	190
380 Miles and Over 360	190	200	200
400 Miles and Over 380	190	200	200
420 Miles and Over 400	200	210	210
440 Miles and Over 420	200	210	210
460 Miles and Over 440	210	220	220

[fol. 281-25] APPENDIX B

Classification of Railroads

Freight Tariff Class "A" Railroads:

The Alabama Great Southern R. R. Co.
Atlanta, Birmingham & Coast R. R. Co.
Atlantic Coast Line R. R. Co.
Atlanta & West Point R. R. Co.
Central of Georgia Rwy. Co.
Charleston & Western Carolina Rwy. Co.
Georgia Railroad.
Georgia, Southern & Florida Rwy. Co.
Lexington Terminal R. R. Co.
Louisville & Nashville R. R. Co.
Monroe Railroad Co.
Nashville, Chattanooga & St. Louis Rwy.
Seaboard Air Line Rwy. Co.
Southern Railway Co.

Freight Tariff Class "B" Railroads:

Bowdon Railway Company.
Collins & Glennville Railroad Co.
Elberton & Eastern Railroad Co.
Flint River & Northeastern R. R. Co.
Gainesville Midland Railway.
Gainesville & Northwestern Railroad Co. (G. A. Austin and Sidney Smith, Receivers.)
Georgia and Florida Railroad.
Georgia, Ashburn, Sylvester & Camilla Ry. Co.
Georgia, Florida & Alabama Railway Company.
Georgia Northern Railway Company.
Georgia, Southwestern & Gulf R. R.
Greene County Railroad Company.
[fol. 281-26] Hartwell Railway Company.
Lakeland Railway.
Louisville & Wadley Railroad Co.
Macon, Dublin & Savannah R. R. Co.
Milltown Air Line Rwy.
Millstead Railway.
St. Mary's Railroad.
Sandersville R. R. Co.

Savannah and Atlanta Railway (Charles E. Gay, Jr., Receiver).
Savannah and Statesboro Railway Co.
Shearwood Railway Company.
Smithonia and Dunlap R. R.
South Georgia Railway.
Statesboro Northern Railway.
Sylvania Central Railway Company.
Talbotton Railroad Company.
Tallulah Falls Railway Company (J. F. Gray, Receiver).
Tennessee, Alabama and Georgia R. R.
Union Point and White Plains R. R. Co.
Wadley Southern Railway Company.
Washington & Lincolnton R. R. Co.
Waycross and Southern R. R. Co.
Wrightsville & Tennille R. R. Co.

Exhibit B

Statement showing distances and rates on crushed stone, sand, and gravel, in effect on dates shown in notes below, from Norris, Ga., to representative destinations in Georgia compared with rates which would result from scales prescribed in Docket 17517 and with rates from Columbia, S. C., Steel Creek, S. C., and Montgomery, Ala.

Rates in Cents per Ton 2,000 Pounds

	From												
	Norris, Ga.					Columbia, S. C.		Steel Creek, S. C.			Montgomery, Ala.		
To—	Miles (joint)	A	B	C	D	Miles (joint)	E	Miles (joint)	F	E	Miles	F	E
Jesup, Ga.	220	167	130	140	150	200	145	151	140	140	S–355	180	170
Blackshear, Ga.	250	....	140	150	160	230	150	181	144	145	J–271	....	170
Waycross, Ga.	245	176	140	150	160	240	160	191	149	145	S–315	171	165
Ousley, Ga.	233	....	140	150	160	309	175	260	162	160	S–245	158	150
Quitman, Ga.	241	176	140	150	160	317	175	268	167	170	S–238	153	150
Boston, Ga.	249	176	140	150	160	331	180	282	167	170	S–223	153	140
Bainbridge, Ga.	272	176	150	160	170	379	190	330	....	180	S–175	140	130
Willacoochee, Ga.	206	167	130	140	150	282	170	211	158	150	J–219	176	150
Brookfield, Ga.	185	....	120	130	145	303	175	232	162	160	J–197	....	145
Tifton, Ga.	177	158	120	130	145	311	175	240	167	160	J–190	167	145

Ty Ty, Ga	186	....	120	130	145	320	175	249	171	160	J–182	....	145
Sylvester, Ga	196	162	130	140	145	332	180	261	171	170	J–169	167	140
Albany, Ga	179	158	120	130	145	315	175	266	176	170	S–159	....	130
Camilla, Ga	204	167	130	140	150	341	180	291	....	175	J–174	158	140
Pelham, Ga	213	167	130	140	150	349	180	300	....	175	J–183	153	145

A—Rates in effect prior to April 1st, 1925.

B—Rates established April 1st, 1925. Apply on sand and unwashed gravel; washed gravel and crushed stone 10 cents per net ton higher.

C—Georgia Public Service Commission's Order of March 13th, 1928, effective May 1st, 1928.

D—Rates which would apply on basis of scale prescribed in I. C. C. Docket, 17517.

E—Rates established as result of order in Docket 17517, effective October 1st, 1927.

F—Rates in effect prior to October 1st, 1927.

S—Single Line.

J—Joint Haul.

Tariff Authorities:

Ga. R. R. I. C. C. No. A 43.
C. & W. C. Ry., I. C. C. No. A 829.
Agent J. H. Glenn's I. C. C. Nos. A 494, A 529 and A 655.

[281-28] EXHIBIT C

Statement showing distances and rates on crushed stone, sand, and gravel from Lithonia, Ga., to representative destinations in Georgia compared with rates which would result from scales prescribed in Docket 17517 and with rates from Columbia, S. C., Jacksons Lake, and Montgomery, Ala.

Rates in Cents per Ton 2,000 Pounds

	From									
	Lithonia, Ga.				Columbia, S. C.		Jacksons Lake, Ala.		Montgomery, Ala.	
To	Miles (joint)	A	B	C	Miles	D	Miles (joint)	D	Miles (single)	D
Columbus, Ga...	140	110	120	135	J-308	175	98	115	95	100
Richland, Ga....	180	120	130	145	J-308	175	115	125	110	110
Americus, Ga...	165	120	130	140	J-278	170	143	135	138	120
Cordele, Ga.....	160	110	120	140	S-306	165	174	140	169	130
Helena, Ga.....	171	120	130	140	S-252	150	228	150	223	140
Vidalia, Ga.....	206	130	140	150	S-217	140	263	170	258	150
Claxton, Ga.....	237	140	150	160	S-186	135	294	175	289	160

A—Rates established April 1, 1925. Apply on sand and unwashed gravel; washed gravel and crushed stone 10 cents per net ton higher.

B—Georgia Public Service Commission's Order of March 12, 1928, effective May 1, 1928.

C—Rates which would apply on basis of scale prescribed in I. C. C. Docket 17517.

D—Rates established as result of order in Docket 17517, effective Oct. 1, 1927.

S—Single line.

J—Joint haul.

Tariff Authorities: Agent J. H. Glenn's I. C. C. Nos. A 529 and A 655.

Atlanta, Ga., April 10, 1928.

[Docket 281-29]

EXHIBIT D

Statement showing distances and rates on crushed stone, sand, and gravel from Howard, Ga., to representative destinations in Georgia, compared with rates which would result from scales prescribed in Docket 17517 and with rates from Steel Creek and Columbia, S. C.

Rates in Cents Per Ton of 2,000 Pounds

	From							
	Howard, Ga				Steel Creek, Ga.		Columbia, S. C.	
To	Miles	A	B	C	Miles	D	Miles	D
Augusta, Ga.	J-182	120	130	145	S- 84	70	S- 83	100
Grovetown, Ga.	J-170	120	130	140	J- 49	95	J- 98	115
Thomson, Ga.	J-148	110	120	135	J- 71	105	J-120	125
Camak, Ga.	J-130	110	120	135	J- 81	115	J-130	135
Warrenton, Ga.	J-138	110	120	135	J- 84	115	J-133	135
Culverton, Ga.	J-120	100	110	125	J- 90	115	J-148	135
Sparta, Ga.	J-115	100	110	125	J-104	125	J-153	140
Haddock, Ga.	J- 81	100	90	115	J-130	135	J-188	145

A—Rates established April 1, 1925. Apply on sand and unwashed gravel; washed gravel and crushed stone 10 cents per net ton higher.

B—Ga. Public Service Com's order of March 13, 1928, effective May 1, 1928.

C—Rates which would apply on basis of scale prescribed in Docket 17517.

D—Rates established as result of order in Docket 17517, effective Oct. 1, 1927.

S—Single line.

J—Joint haul.

Tariff Authorities: Agent J. M. Glenn's I. C. C. Nos. A-529 and A-655.

Exhibit E

Statement showing distances and rates on crushed stone, sand, and gravel from Junction City and Elberton, Ga., to representative destinations in Georgia compared with rates which would result from scales prescribed in Docket 17517 and with rates from Knoxville and Chattanooga, Tenn.

Rates in Cents per Ton 2,000 Pounds

	From											
	Junction City, Ga.				Elberton, Ga.				Knoxville, Tenn.		Chattanooga, Tenn.	
To	Miles (joint)	A	B	C	Miles (joint)	A	B	C	Miles	D	Miles	D
Crandell, Ga	201	130	140	150	134	110	120	135	S-96	100	J-107	125
Chattsworth, Ga	193	130	140	145	126	100	110	135	S-104	110	J-115	125
Fairmount, Ga	169	120	130	140	102	100	100	125	S-128	120	J-109	125
Cartersville, Ga	149	110	120	135	82	100	90	115	S-148	120	S- 89	100
Acworth, Ga	136	110	120	135	69	90	80	105	J-161	140	S-102	110
Marietta, Ga	122	100	110	125	55	80	80	95	S-175	130	S-115	110
Blue Ridge, Ga	205	130	140	150	138	110	120	135	S-120	110	J-131	135
Ellijay, Ga	189	120	130	145	122	100	110	125	S-136	120	J-147	135
Jasper, Ga	169	120	130	140	102	100	100	125	S-156	130	J-163	140
Tate, Ga	164	120	130	140	97	100	100	115	S-161	130	J-158	140

Canton, Ga.	146	110	120	135	79	90	90	105	S-179	135	J-140	135
Woodstock, Ga	134	110	120	135	67	90	80	105	S-187	135	J-128	135

A—Rates established April 1st, 1925. Apply on sand and unwashed gravel; washed gravel and crushed stone 10 cents per net ton higher.

B—Georgia Public Service Commission's order of March 13, 1928, effective May 1, 1928.

C—Rates which would apply on Basis of Scale prescribed in Docket 17517.

D—Rates established as result of order in Docket 17517, effective October 1, 1927.

S—Single line.

J—Joint haul.

Tariff authorities: Agent J. H. Glenn's I. C. C. Nos. A-529 and A-655.

[fol. 282] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

MOTION FOR GENERAL INVESTIGATION

Come now State Highway Commission of Georgia, City of Atlanta, Counties of Fulton and DeKalb, and Atlanta Freight Bureau, and move the Commission to institute a general investigation into the rates, charges, and practices of the carriers with relation to the commodities named in the above described proceeding and that such investigation include all of Southern territory; and for cause of this motion respondents say,

That there now exists in the State of Mississippi rates made on different bases but which rates are generally lower than the rates in Georgia; that the carriers maintain rates between the State of Tennessee and the State of Mississippi and from Alabama to those states which are lower than the interstate rates prescribed in the above-styled proceeding and lower than the rates in Georgia; that the situation in Georgia with reference to the proportion of joint line and single line hauls differs from that interstate and differs from that intrastate in other states; that since the institu-[fols. 282½-286] tion of the investigation described in the title hereof some three years have elapsed and in order properly and constitutionally to prescribe rates and rate relationships facts as they exist today should be known.

Wherefore respondents pray that a general investigation be had to the end that justice may be done all states and communities.

Watkins, Asbill & Watkins, Watkins, Asbill & Watkins, Attorneys, 403 Atlanta Trust Company Bldg., Atlanta, Georgia.

[fol. 287] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

REPLY OF ROQUEMORE GRAVEL COMPANY, ALABAMA SAND AND GRAVEL COMPANY, AND THE MONTGOMERY CHAMBER OF COMMERCE TO PETITION OF THE STATE HIGHWAY COMMISSION OF GEORGIA, CITY OF ATLANTA, COUNTIES OF FULTON AND DEKALB, AND THE ATLANTA FREIGHT BUREAU FOR A GENERAL INVESTIGATION, THROUGHOUT SOUTHERN TERRITORY, INTO THE RATES, CHARGES, AND PRACTICES OF THE CARRIERS ON THE COMMODITIES INVOLVED IN THE PROCEEDING

Come now the Roquemore Gravel Company and the Alabama Sand and Gravel Company, corporations engaged in the production and distribution of sand and gravel, with pits located within the industrial switching limits of Montgomery, and who distribute sand and gravel to points in Alabama, Georgia, Florida, South Carolina, Tennessee and Mississippi and have a direct, and not a local, interest in all the rates involved and present this reply to the petition of the State Highway Commission of Georgia, City of Atlanta, Counties of Fulton and DeKalb and the Atlanta Freight Bureau.

The petitioners say that two or three years have elapsed since the investigation, under this docket, was instituted and facts as they exist today should be known. The rates into Florida, considered along with this docket and made a sub-number thereof, are ordered to become effective July 2nd. If we are to have a general investigation every two or three years into these important aggregate material rates because of the constantly changing decisions of the one state (Georgia) commission there will never be any stability to the rate adjustment and the record might as well be kept open indefinitely. Petitioners are not asking for a reconsideration or re-hearing of the matters involved under this docket but are requesting a new and additional general investigation which could not be properly conducted under the docket and the petition is, therefore, not authorized by

the Commission's Rules of Practice and should be denied for this if for no other reason.

[fol. 288] It is not understood that petitioners are interested in anything more than the rates in Georgia, which rates are now before the Commission in appropriate proceedings and would have been previously disposed of had it not been for the lofty attitude taken by the Georgia Commission in the proceedings before the Commission, accompanied by its critical attitude towards the Alabama Public Service Commission which has since adopted for intrastate application in Alabama the precise scale prescribed by the Interstate Commerce Commission, while the Georgia Commission has declined to follow the same proper course.

The Georgia intrastate rates should have been required, by the Interstate Commerce Commission, to have been put on the interstate level and when this is accomplished as a consequence of the carriers 13th section petition now pending the rates in Georgia, the rates in Alabama and between Alabama and Georgia will be on the scale prescribed by the Commission in what was, as a matter of fact, a general investigation and covered by this docket and related cases.

With all investigations now before the Commission, as well as those in contemplation, we have no fear that the Commission will institute another general investigation into the rates on these aggregate materials before a year has lapsed since the new rates became effective as a result of its general investigation. The general investigation that was had into these rates, while consuming considerable time on the part of the Commission and practically every shipper of aggregate materials in Southern Territory on a most complete record, the time consumed was relatively less than that ordinarily required in general investigations of rates on such important moving commodities. To undertake another general investigation on these same articles at this time, when intrastate rates are being brought into line with those prescribed by the Interstate Commerce Commission, would be to undo all that has been accomplished in making effective throughout Southern Territory interstate and intrastate, reasonable and non-discriminatory rates on these materials. The industry is becoming adjusted to these new rates and new plants are being built, at points in South Alabama, predicated thereon involving an outlay of capital of as much as $150,000.00 each.

These interests in whom this reply is made have already been through a general investigation of the rates on the material in question. It is true that the Commission did not issue an order directing that the intrastate rates in [fol. 289] Georgia and Mississippi be put on the interstate level which it has prescribed in formal complaints brought by these interests, but the failure of the Commission to issue such orders was over protest of the complainants and has resulted, and continues to result, to their injury. This litigation has already been very expensive to complainants and it is respectfully submitted that this mere strategic move of petitioners for another general investigation, for the purpose of keeping the intrastate rates in Georgia from coming up to the level prescribed by the Commission for interstate application, should be forthwith dismissed by the Commission.

Petitioners predicate their entire claim for another general investigation of these rates upon the allegation that the rates in Mississippi are lower than in Georgia and that there are some rates between points (principally via the Illinois Central) in Tennessee and points in Mississippi and from some points in Alabama to points in Tennessee and Mississippi which are lower than the interstate rates prescribed by the Commission. How the fact that these few rates have not been properly brought into line with the interstate scale of the Commission justifies another general investigation is not set forth. If what movants want is that these rates be brought up to the interstate level they should first show their interest in such rates and then file an appropriate complaint against them. If such a complaint is filed we will join enthusiastically in support thereof.

The rates prescribed by the Commission in this docket have been made effective on intrastate traffic in the following southern states: Alabama, Tennessee, Kentucky, North Carolina and South Carolina. These rates have also been made effective on intrastate traffic in Florida over the L. & N. R. R. Co. and intrastate in Virginia over the L. & N. R. R. Co.

These rates apply interstate throughout Southern Territory except in connection with certain lines operating between Tennessee and Mississippi, principally in connection with the Illinois Central System and certain affiliated lines.

These rates will apply, with differentials, from all Southern points to all points in Florida effective July 2nd.

The scale referred to applies all over the South today intrastate and interstate except between points in Georgia and between points in Mississippi intrastate and in connection with some movements over the Illinois Central and affiliated lines.

[fol. 290] The fact that the Georgia intrastate rates differ from the interstate rates is something we have long complained about and we hope it will be corrected when the Commission disposes of the pending 13th section complaints of the Georgia carriers. No general investigation is necessary for this purpose as practically all other rates, inter and intrastate, in the Southern Territory have now been revised to the basis prescribed by the Commission, except intrastate in Georgia and Mississippi and we complained about these rates under this docket.

Respectfully submitted.

Roquemore Gravel Company, Alabama Sand & Gravel Company, Montgomery Chamber of Commerce, by M. M. Caskie, Chamber of Commerce Building, Montgomery, Alabama.

Dated at Montgomery, Alabama, June 1st, 1928.

[fol. 291] BEFORE INTERSTATE COMMERCE COMMISSION

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

No. 17763

ROQUEMORE GRAVEL COMPANY et al.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al.

ORDER REOPENING CAUSES—June 4, 1928

It appearing, That under date of January 21, 1927, the Commission issued a report and order in the above-entitled

proceedings and in No. 17517 prescribed a reasonable basis of rates and minimum weights for the interstate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points in the State of Georgia, and between points in the State of Georgia and points in other states in Southern territory, except Florida, and that the said reasonable basis of rates and minimum weights was also prescribed in No. 17763 for the interstate transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia;

It further appearing, That in said report the Commission stated it did not deem it necessary to make any findings or enter any order in No. 17517 in so far as unjust discrimination against interstate commerce was there involved, as it was felt that the Georgia Public Service Commission would cooperate in authorizing such revision in the intrastate rates within Georgia as might be necessary to bring such rates into harmony with the interstate adjustment prescribed as aforesaid;

It further appearing, That a petition has now been filed on behalf of carriers respondent in No. 17517, operating in the State of Georgia, in which it is averred that the Georgia Public Service Commission by order promulgated on the 13th day of March, 1928, effective the 1st day of May, 1928, required petitioners to establish rates on the aforesaid commodities within said State of Georgia which are not in harmony with, but are in many instances widely at variance with, and less than, the rates required to be established by this Commission for interstate traffic, and that said petitioners pray that this proceeding be reopened for further investigation;

It is ordered, That No. 17517 be, and it is hereby, reopened for further hearing on the sole question of whether or not the rates and minimum weights required by the Georgia Public Service Commission to be maintained by said respondent railroads on intrastate shipments of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in relation to the interstate rates and minimum weights prescribed as aforesaid causes, or will cause, any undue or unreasonable advantage, preference, or preju-

dice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

[fol. 292] It is further ordered, That No. 17763 be reopened solely on the issue as to whether the intrastate rates and minimum weights maintained by defendants between points in Georgia on sand, gravel (washed or unwashed), clay gravel and crushed stone result in undue and unreasonable prejudice and disadvantage of complainants in No. 17763, in shipping sand, gravel (washed or unwashed) and clay gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in the State of Georgia.

It is further ordered, (1) That the State of Georgia be notified of these proceedings by sending copies of this order and of said petition, by registered mail, addressed to the Governor of the State of Georgia, at Atlanta, Ga., and to the Georgia Public Service Commission, at Atlanta, Ga.

(2) That notice of these proceedings be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

(3) That these proceedings be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 293] Before Interstate Commerce Commission

Docket 17517 et al.

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

Reply of the Alabama Public Service Commission to Motion of the State Highway Commission of Georgia, City of Atlanta, Counties of Fulton and DeKalb, and Atlanta Freight Bureau for a General Investigation of Rates on Said Commodities Throughout Southern Territory

Comes now the Alabama Public Service Commission, a party to the above-entitled proceeding, and submits this

reply to the motion of the State Highway Commission of Georgia, City of Atlanta, Counties of Fulton and DeKalb, and Atlanta Freight Bureau, seeking a general investigation of the rates on chert, clay, sand and gravel throughout southern territory.

I

While the request of the aforementioned parties for a general investigation is submitted in the form of a motion, it is in reality an application for rehearing of the proceeding consolidated under Docket 17517, and it should be so treated. In such applications the Commission's Rules of Practice require that the grounds for rehearing be set out fully and explicitly and that they must not be merely sumulative.

[fol. 294]

II

The only grounds upon which movants predicate their request are:

1. That rates in the state of Mississippi are generally lower than those in the state of Georgia.

2. That certain rates are maintained by the carriers between points in the state of Tennessee and points in the state of Mississippi, and from points in Alabama to points in those states, on a lower basis than the scales prescribed by the Commission in the above-entitled proceeding, and on a lower basis than the rates in the state of Georgia.

3. That the situation in Georgia with reference to the proportion of joint-line to single-line hauls differs from the situation on interstate traffic and from the situations in other states.

4. That some three years have elapsed since the institution of the investigation by the Commission under the above-entitled proceeding and that a new investigation is necessary to obtain the facts as they exist today.

III

The record before the Commission showed all of the things alleged as the basis for a new investigation in the motion in question. Another investigation would simply

[fol. 295] have to travel over the same ground as the former. The facts in the former record showed clearly that in some sections of southern territory the proportion of joint-line hauls to single-line hauls is somewhat greater than in other sections, but all of that evidence was considered by the Commission. Nothing new could be developed. The outstanding fact was and undoubtedly is that the predominant movement in southern territory as a whole is single-line. It is a fact that in some of the states, including Georgia and Mississippi, the intrastate rates have not been brought up to the level of the interstate scales. It is also true that some of the interstate rates have not been revised. But, obviously, the proper way to cure these situations is by a proceeding limited only to them. A general investigation would upset the constructive work which has been accomplished in the major portion of this territory. The intrastate rates in Alabama, Kentucky, North Carolina, South Carolina and Tennessee have been brought into harmony with the interstate scales prescribed by the Commission in the proceeding under Docket 17517, et al. In addition thereto, the majority of the interstate rates in the Southeast have been revised upon that basis, or shortly will be so revised. We submit, therefore, that no sufficient reasons have been shown why a general investigation of the [fol. 295-a] rates on chert, clay, sand and gravel in southern territory should be instituted, and we trust the Commission will not undertake to do so.

Dated at Montgomery, Alabama, June 2, 1928.

Respectfully submitted.

Alabama Public Service Commission, by Hugh White, Hugh White, President; J. H. Alldredge, J. H. Alldredge, Chief Transportation Bureau.

[fol. 296] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

MOTION FOR ORDER DIRECTING DEFENDANTS TO FURNISH CERTAIN INFORMATION

Now comes the Georgia Public Service Commission, by its undersigned attorney, and respectfully requests the In-

terstate Commerce Commission to direct defendants, Atlanta & West Point Railroad Company, and Western Railway of Alabama, and each and every other railroad company participating in the transportation of sand and gravel from Montgomery, Alabama, to Atlanta, Georgia, to furnish the following information:

1. The number of carloads and tonnage of sand and gravel transported during a representative time, not less than three months, in the year 1928, from Montgomery, Alabama, (including points adjacent to Montgomery taking the same rate,) to Atlanta, Georgia.

2. The total freight charges collected or accrued on said traffic for said period and the rate or rates in cents per net ton or per 100 pounds upon which based.

Your petitioner further requests that said information, when furnished, shall be incorporated in the record of evidence in the above entitled case.

[fol. 297] In support of this request, attention is respectfully called to the fact that the evidence taken at the hearing herein, before Examiner E. H. Waters, on November 26, 27, and 28, 1928, shows that the rate of the defendants from Montgomery to Atlanta is not the full rate that would result from applying the maximum scale set forth in the Commission's decision heretofore entered in No. 17517 to the mileage from Montgomery to Atlanta, computed according to the formula in the said decision.

Attention is further directed to the fact that defendants are claiming that on certain sand, gravel, and crushed stone traffic, intrastate within the State of Georgia, the failure to charge the full amount of rates that would be produced by application of the maximum scale set forth in the said decision in No. 17517 against the actual mileage, results in a substantial depletion of the railroad revenues.

Request for this data was made at the hearing (record 1885). The defendants refused to furnish it taking the ground that it was or might be an unlawful disclosure of information respecting the business of their patrons. However, in the course of said hearing, the same defendants had filed exhibits, without the consent of the shippers involved, setting forth exact information of the tonnage of single individual shippers from particular quarries or pits

to specific destinations. There are many producers at [fol. 298] Montgomery and many consumers at Atlanta. The giving of the total tonnage of all shippers from Montgomery to all consignees at Atlanta would not, therefore, disclose any information of the traffic of a particular concern.

Dated at Chicago, this 17th day of December, 1928.

Respectfully submitted.

John S. Burchmore, Attorney for Georgia Public Service Commission. Walter, Burchmore & Belnap, of Counsel, 1522 First National Bank Bldg., Chicago, Ill.

[fol. 299] BEFORE INTERSTATE COMMERCE COMMISSION

Docket 17517

In re Rates on Chart, Clay, Sand, & Gravel

OBJECTIONS TO AND PROTEST AGAINST REQUEST OF THE GEORGIA PUBLIC SERVICE COMMISSION THAT THE RESPONDENT RAILROADS BE REQUIRED TO FURNISH AS EVIDENCE OF RECORD INFORMATION DESCRIBED IN THE MOTION DATED DECEMBER 17, 1928

Come now the Roquemore Gravel Company and the Alabama Sand and Gravel Company, corporations engaged in business in the City of Montgomery, State of Alabama, and parties to the above entitled proceedings, respectfully showing unto the Commission as follows:

1. Substantially all the tonnage of sand and gravel shipped from Montgomery to Atlanta, Georgia, in the year 1928 by railroads was shipped by these companies which are affiliated with each other by stock interests.

2. For the respondent railways to disclose to the public and competitors of these protestants who are parties to the proceedings information as to the tonnage of such shipments during all or any part of the year 1928 from Montgomery to Atlanta would be to disclose "information which may be used to the detriment or prejudice" of such shippers, "or which may improperly disclose their business

transactions to a competitor" in violation of paragraph 11, Section 15 of the Interstate Commerce Act; and on such grounds these shippers respectfully refuse their consent to the respondent carriers supplying such information.

3. The prohibition of such statutory enactment is absolute in all instances other than those provided for by way of exceptions. But information of the character forbidden may not be required in response to any process which might be used by this Commission since it is neither a State nor a [fol. 390] Federal court; the information is not purposed to be given to any officer or agent of the government for his own use in the exercise of his own powers and to be kept within the confidence thereof; nor is such information sought for the prosecution of any person charged with or suspected of crime. Therefore none of the exceptions provided in such statute is available to enable the lawful requirement that the respondent railroads furnish the requested information.

4. Such information would in any event be legally irrelevant and immaterial to the questions involved in the proceeding. If interstate commerce as a whole is being unjustly discriminated against within the sense of Section 13 of the Interstate Commerce Act the State authorities of Georgia may not require continuance of such unjust discrimination even if it were true that a particular railroad might, as to certain interstate commerce, be charging less than the maximum interstate rate permitted on like traffic between two particular points.

5. It is not conceded that the distance from Montgomery to Atlanta is as much as 175 miles. In determining the interstate rate level and rates appropriately to be charged from neighboring states into Georgia this Commission in its late decision of Docket #17517 calculated the distance from Montgomery to Atlanta as less than 175 miles. It is true that in connection with testimony submitted at the hearing in Atlanta on November 26, 1928 a railroad official testified that subsequently to such decision of the Commission there had been made a recalculation of the distance from Montgomery to Atlanta with an indicated result mentioned in the motion here being considered. However, issue

with respect to such claim was not taken by Montgomery interests at that time or place because no pending proceeding before the Commission involves the question whether [fol. 301] the charge in effect on sand and gravel from Montgomery to Atlanta is less than the maximum previously authorized by this Commission. Of course, on any theory the information requested by the Georgia Public Service Commission would be without the slightest significance unless it should first be formally and finally decided that the prevailing charge from Montgomery to Atlanta is less than the maximum previously authorized. Therefore, to engage in consideration and decision of such matter as a condition precedent to a decision whether to require the information requested to be furnished would be collaterally to decide a question not now pending before the Commission in any proceeding, although such question would be one of vital importance to the Montgomery shipping interests and as to which they have not yet been heard.

6. It is of no concern that a railroad may have lawfully or unlawfully supplied other information for use as evidence in the pending procedings: the objection here goes to the particular information now requested by the Georgia Public Service Commission, and the furnishing of which would be detrimental and prejudicial to the interests of these protestants.

Respectfully, Roquemore Gravel Company, Alabama Sand & Gravel Company, by (S.) Chas. E. Cotterill, R. H., Chas. E. Cotterill, Attorney.

Suite 505 Grant Bldg., Atlanta, Ga.

[fols. 302-304] BEFORE INTERSTATE COMMERCE COMMISSION

No. 17517

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

No. 17763

ROQUEMORE GRAVEL COMPANY, et al.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY, et al.

ORDER DENYING MOTION FOR ORDER REQUIRING CERTAIN INFORMATION—Jan. 14, 1929

Upon further consideration of the records in the above-entitled proceedings and consideration of the motion filed by the Georgia Public Service Commission requesting that certain defendants be directed to furnish information for the record as to the number of carloads and tonnage of, and rates charged and total freight charges collected on, sand and gravel transported during a representative period of 1928, from Montgomery, Ala., and points taking the same rates, to Atlanta, Ga.,

It is ordered, That the said motion be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 305] BEFORE INTERSTATE COMMERCE COMMISSION

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

No. 17763

ROQUEMORE GRAVEL COMPANY et al.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al.

ORDER DENYING REHEARING—Feb. 3, 1930

Upon further consideration of the record in the above-entitled proceedings, and upon consideration of petition

on behalf of the Georgia Public Service Commission "for rehearing, etc.";

It is ordered, That the said Petition be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1] Before Interstate Commerce Commission

Docket No. 17517

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia.

Docket No. 17689

Roquemore Gravel Company et al.

v.

Atlanta, Birmingham & Atlantic Railway Company, et al.

Docket No. 17699, Sub. No. 1

Roquemore Gravel Company et al.

v.

Atlanta, Birmingham & Atlantic Railway Company, et al.

Docket No. 17763

Roquemore Gravel Company et al.

v.

Atlanta, Birmingham & Atlantic Railway Company, et al.

Docket No. 17764, Sub. No. 1

Dixie Sand & Gravel Company

v.

Atlanta, Birmingham & Atlantic Railway Company, et al.

I. & S. Docket No. 2470

Sand, Gravel and Slag from Alabama and Tennessee to Points in Georgia

Narrative Abstract of Evidence

Atlanta, Georgia, February 15, 1926.

Before E. I. Lewis, Commissioner, and E. H. Waters, Examiner

[fol. 2] APPEARANCES OF COUNSEL

Chas. E. Cotterill for Roquemore Gravel Co., Dixie Gravel Co., and Tennessee Cooper Co.

Edgar Watkins, for City of Atlanta, Fulton and DeKalb Counties, Georgia State Highway Commission, and Atlanta Freight Bureau.

Edwin Brooker, for Atlanta Sand & Supply Co., Atlanta, Ga., Allen Sand Co., Allen, Ga., Weston & Brooker, Columbia, S. C., Palmetto Quarries, Columbia, S. C., Southern Crushed Stone & Granite Co., Trenton, S. C., Stone Mountain Granite Corp'n, Atlanta, Ga., Stockbridge Stone Co., Stockbridge, Ga., Johnson Granite Co., Lithonia, Ga., Kinney & Newmeyer Granite Co., Lithonia, Ga., Wilson-Chapman Granite Co., Lithonia, Ga., Morris Stone Co., Macon, Ga., R. E. Suggs, Atlanta, Ga.

John S. Burchmore, appearing for Tri-State Road Material Association, interveners.

Otho M. Graves, and B. F. Martin, for National Crushed Stone Association.

B. F. Martin, for Alabama Rock Asphalt Co., Colbert Limerock Asphalt Co. and Uvalde Paving Company.

M. C. Moore, Rush H. Knox and B. F. Martin, for Mississippi Railroad Commission and Rush H. Knox, Attorney-General.

T. P. Goodwin, for Simpson Co. Gravel Co., Saratoga, Miss.

R. A. McCaffrey, for Cast Iron Pipe Committee of Alabama Iron & Steel Shippers' Conference.

C. E. Jones, for Birmingham Traffic Association.

A. J. Ribe, for Birmingham Slag Co., Birmingham, Ala., and Montgomery Gravel Co., Montgomery, Ala.

[fol. 3] C. R. Moffett, for Tennessee Cooper Co., Copper Hill, Tenn.

E. Del. Wood, for Chattanooga Manufacturers Association.

B. R. Shepherd, for Chattanooga Manufacturers Association.

J. L. Griffith, for Dixie Sand & Gravel Co.

E. J. Cosgrove, Jr., for Florida Rock Products Co.

H. L. Brooks, for North Georgia Marble Products Co., Thompson, Weinman & Co., and Ladd Lime & Stone Co.

H. T. Moore and E. L. Hart, for Atlanta Freight Bureau, State Highway Dept., Fulton County and City of Atlanta.

Frank W. Gwathmey, for Atlantic Coast Line R. R., Seaboard Air Line Ry., Central of Ga. Ry., Charleston & Western Carolina Ry., Georgia Railroad, Atlanta & West Point R. R., Western Railway of Alabama, and Nashville, Chattanooga & St. Louis Ry.

Edw. D. Mohr and B. F. Morris, for Louisville & Nashville R. R. Co.

C. J. Rixey, L. V. Crane and H. L. Walker, for Mobile & Ohio R. R., and Southern Railway System Lines.

T. T. Masengill, for Seaboard Air Line Ry.

Roy Pope, for Atlanta, Birmingham & Atlantic Ry., B. L. Bugg, Receiver.

E. M. Price, for Georgia Public Service Commission.

[fol. 4] STATEMENT BY COMMISSIONER LEWIS

Commissioner Lewis: Interventions have been allowed in Docket No. 17763, by Weston & Brooker Company, Palmetto Quarries, located at Columbia, S. C.; the Southern Crushed Stone Company, located at Trenton, S. C.; the Stone Mountain Granite Corporation, Stockbridge Stone Company, Johnston Granite Company, Kinney & Newmeyer Granite Company, Lithonia, Ga., the Wilson-Chapman Granite Company, the Morris Stone Company, Macon, Ga.; R. E. Suggs, Atlanta, Sand & Supply Co. and the Allon Sand Company, Allon, Ga., all located at points in Georgia.

In Docket 17763 and 17764 and 17764, Sub-No. 1, the Tennessee Copper Company, Inc.; and in No. 17699 and 17699, Sub-No. 1, the Birmingham Traffic Association.

The Tri-State Road Material Association, producers and shippers in western Tennessee, western Kentucky and

the State of Mississippi intervened in Dockets 17699, Sub-No. 1 thereof, and in 17689 and 17763. The Colbert Limerock Asphalt Company, et al., intervene in No. 17763 (Rec. 11).

The Birmingham Slag Company of Birmingham and the Montgomery Gravel Company of Montgomery intervene in Docket No. 17699 and Sub-No. 1, also Dockets 17689, 17763, 17764, and Sub-No. 1 (Rec., 13).

The State Highway Commission of Georgia, City of Atlanta, Counties of Fulton and DeKalb, Georgia, and the Atlanta Freight Bureau intervene in all of these cases (Rec., 13).

The Cast Iron Pipe Committee of the Alabama Iron & Steel Shippers Conference intervenes in Docket 17689 (Rec., 14).

The Alabama Public Service Commission intervenes in No. 17699 and the other cases heard herewith.

The Georgia Public Service Commission enters its appearance (Rec., 15).

[fol. 5] Commissioner Lewis: I will hand to those who have entered an appearance a four-page summary which I shall read and before doing so want to say that under our procedure as it has developed, it is possible in such a gathering as this for us to produce a record that is not only lengthy but confusing and full of repetition, a good deal of which could well fit into the realm of argument which we believe should be set aside for counsel (Rec., 16).

I am suggesting after mature thought that we see if we cannot shorten this hearing and save a great deal of needless expenses in all three elements of time, energy and money. I will read a brief statement of the issues and as the day progresses I want you to correct it if any correction is necessary (Rec., 17).

The order of investigation in this case, 17517, brings in issue the question of whether the rates on chert, clay, sand, and gravel and other commodities specified in said order required by the Georgia Public Service Commission by its Order of February 25th, 1925, to be maintained by the petitioning carriers herein for movement of said commodities between points in the state of Georgia result in undue and unreasonable preference and advantage to

intrastate commerce to the undue and unreasonable prejudice and disadvantage of interstate commerce and unjust and unreasonable discrimination against interstate commerce, and if so what rates, if any, should be prescribed to remove such advantage, preference, prejudice or discrimination (Rec., 17).

The complaint cases bring in issue the following matters:

[fol. 6] The reasonableness of rates on sand and gravel maintained by defendants from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia, Florida and Mississippi, and whether the said rates on gravel from and to the same destinations are unduly prejudicial to complainants and preferential of shippers of slag from Birmingham, Ala., and other producing points to the same destinations (Rec., 18).

Whether the rates maintained by defendants on sand and gravel from Montgomery, Ala., and Chattanooga, Tenn. to destinations in Georgia and Mississippi are unreasonable and unduly preferential of intrastate shippers of the same commodities between points in the states of Mississippi and Georgia, and of shippers of crushed rock intrastate between points in Georgia (Rec. 18).

Whether a rate of 79 cents per ton maintained by the Central of Georgia Railway and the Atlanta, Birmingham & Atlantic Railway from certain points on their lines in Georgia to Birmingham, Ala. is less than a just and reasonable rate (Rec., 18).

And now, I. & S. 2470. I understand that the only issue remaining in this proceeding for consideration is the propriety of certain schedules which propose increased rates on slag from Copperhill, Tenn. to points in Georgia, the other schedules having been withdrawn and revised schedules subsequently filed in lieu thereof having been permitted to go into effect (Rec., 18).

I have taken the matter up with Mr. Gwathmey for the carriers and understand there is to be an extension of the effective date of the tariffs.

You will let me know during the day whether this statement substantially sets forth the issues involved.

[fol. 7] Mr. Gwathmey: I will submit the question of an extension of the tariffs to the representatives of the carriers and report the answer (Rec., 19).

Mr. Martin: It is quite probable that at the proper time I shall offer a motion to eliminate any reference to the freight rates in Mississippi (Rec., 19).

If this complaint Docket 17763 presumes to place in issue the intrastate rates in Mississippi, which I understand from this that it does, then we shall offer a written motion to eliminate that, because the issues are not properly joined, and they are so indefinite and so general in character that it is impossible for the state authorities of Mississippi to know what rates are under attack (Rec., 20).

Commissioner Lewis: I will propose in the hearing of these cases, if agreeable to counsel, to eliminate the filing of preliminary briefs. There will be a proposed report to which exceptions can be taken covering what otherwise would be included in preliminary briefs. After the testimony is in we will give counsel an adequate time to digest the testimony, not over twenty-four hours, and then on this record you may make your summation and diagnosis and argue the case orally. It will be our purpose to limit the testimony here to the realm of facts and leave the argument for the attorneys (Rec., 21).

QUESTIONS SUBMITTED

In order that there may not be in these proceedings duplication of testimony, testimony upon matters that have little or no probative force in the decision of the issues, or controversy as to facts as to which the parties might agree, and to the end that the testimony offered may only concern controverted and material facts, I submit to all parties for their consideration the following questions:

[fol. 8] (1) Can agreement be reached as to average value at shipping point of the different commodities involved in these proceedings?

(2) Do the parties agree that the different values of the several commodities at shipping points do not warrant a difference in the transportation rates applied? If the parties are of opinion that there should be a difference in the rates, can they agree as to the difference?

(3) Can agreement be reached as to the average loading of each commodity?

(4) Can agreement be reached as to the points of shipment of each of these commodities in the states of Georgia, Alabama, Mississippi, Tennessee, North and South Carolina?

(5) Can agreement be reached as to the extent of the movement for a representative period of the several commodities involved?

(6) Is it agreed that the operating and transportation conditions throughout the general territory here involved are similar? (Rec., 21.)

(7) May it be admitted in principle that the same basis or level of rates should apply on these commodities throughout the general territory here involved and that such is true whether the movement is interstate or intrastate? An answer to this question in the affirmative will not be construed as preventing any party from offering proof to show instances where due to exceptional conditions the normal level of rates should not be applied (Rec., 22).

(8) Assuming that the same basis or level of rates should apply throughout the general territory involved, can the parties agree in suggesting to the Commission the manner by which this should be brought about? That is, by the prescription of a mileage scale of rates, specific point to point rates, or otherwise (Rec., 22).

[fol. 9] (9) In Sand and Gravel to the Southeast, 83 I. C. C. 436, the Commission found justified a certain scale of rates on sand and gravel from points on the Charleston & Western Carolina Railway to points in the Southeast. Can an agreement be reached as to the extent such basis of rates there approved is relevant for consideration in connection with the disposition of these proceedings? Is there any objection by the parties to stipulating that the intrastate scales of rates considered in that case may be considered as part of the record in this case? (Rec., 22.)

(10) In Meridian Traffic Bureau versus Southern Railway Co., 60 I. C. C. 5, and Meridian Rate Case, 66 I. C. C. 179, the Commission fixed, among other things, a basis of rates on sand and gravel from Meridian, Miss., to certain destination territory in Alabama. Can an agreement be

reached as to the extent such basis of rates is relevant for consideration in connection with these proceedings? (Rec., 23.)

(11) If it is shown in these proceedings that a revision or readjustment of the rates on these various commodities is warranted, should such revision or readjustment be accomplished in such a way as neither substantially to reduce or substantially to increase revenues now derived by the carriers collectively for the transportation of such commodities?

(12) The enumeration of the above questions for consideration is not meant to exclude from consideration by the parties of other matters which might occur to them and upon which an agreement might be reached. As has been stated, it is desired that testimony be offered only upon controverted and material facts (Rec., 23).

[fol. 10] It will be the purpose of the Commission in this record to limit testimony to the realm of fact, leaving for counsel deductions and arguments (Rec., 23).

MOTION TO DISMISS

Mr. Martin: I would like at this time to move to dismiss that part of the complaint concerning the Mississippi intrastate rates. We take the position that it is impossible to determine our state rates under such a complaint. It is too broad (Rec., 26).

Mr. Burchmore: I desire to concur in this motion, which is jurisdiction, on behalf of the Tri-State Road Material Association (Rec., 26).

Mr. Cotterill: I should not like to speak out of my turn, but the thought is so insistent in my mind that there is one decisive answer to the motion that I really believe it would economize in the end if I might be permitted to call attention to the fact that counsel representing the movements must on reflection realize that there is no possibility under the statute for one Commissioner to dismiss a case; in other words, if we were to assume defects in the complaints of a

character which in law would warrant dismissal, we are compelled necessarily to call attention to the fact that there is no method provided in the statute by which one commissioner may assume responsibility for reaching such a decision (Rec., 26).

Mr. Martin: It is a matter of ruling on the testimony to be taken (Rec., 26).

Mr. Burchmore: I concur in the technical point made by Mr. Martin and desire to say that the members of the Association which I represent and who ship these materials on intrastate rates in Mississippi, are not sufficiently informed of what is here under attack, so that we could prepare any sort of defense to what the attack may prove ultimately to be (Rec., 28).

[fol. 11] Mr. Cotterill: The rules of practice make express provision for filing motions of this character before the hearing. No complaint may be dismissed at any time by one member of the Commission. I am proposing avoiding any reply to the supporting argument which counsel have made (Rec., 29).

Commissioner Lewis: Even if there were a division of the Commission present, we would probably not act on this motion offhand. The hearing will proceed. The matter is of record and will be laid before the Commission (Rec., 29).

We will take testimony concerning the Mississippi intrastate rates (Rec., 29-30).

Mr. Martin: I wish to note an exception (Rec., 30).

After discussion, President Patterson of the Alabama Commission was chosen as chairman of the conference of the parties to the case for discussion of the questions presented by Commissioner Lewis (Rec., 42).

The hearing recessed to February 16 (Rec., 45).

[fol. 12] Atlanta, Georgia, February 16, 1926.

The Central of Georgia Sand Company and Acme Sand & Supply Company intervene in No. 17689 (Rec., 46).

ANSWERS TO QUESTIONS

Mr. Patterson: Before making the report of the conference yesterday, I express the high appreciation of the mem-

bers present of the motives which prompted you to suggest the conference and a method by which these proceedings might be shortened and expedited. It was the unanimous opinion of the conference that such results as were anticipated by the suggestions made by you would be most fortunate if they could have been fully realized. But due to variance of interests and conflict of opinion, it was impossible for the conference to agree upon many of the questions propounded (Rec., 48).

The answer of the conference to question No. 1 is in the negative.

The answer to question No. 2 is in the negative.

The answer to question No. 3 is: That the information immediately available was so meager that it was impossible, certainly at this time to state what is the average loading over the territory as a whole of these commodities, and it was therefore suggested that the question be answered by the statement that the loading generally is the marked capacity of the car or greater, with the right of any parties to submit evidence which they may have as to the loading of these commodities (Rec., 48).

The answer to question No. 4 is as follows: The carriers agree to provide a list of points of shipment after receiving within 48 hours a suggestion from representatives of the shippers, and to report said list for the record; Mr. Morris of the Louisville & Nashville Railroad was designated by the carriers and has kindly agreed to receive sug- [fol. 13] gestions and data from the shippers as to the points of shipment of the various commodities involved (Rec. 49).

The answer to question No. 5 is in the negative.

The answer to question No. 6 is: Yes, except as to the Peninsular of Florida, as to which it is agreed that exceptional treatment is justified, and except as to the short lines, the Louisville & Nashville Railroad reserving the right to make a showing in behalf of the Louisville & Nashville Atlanta Division Old Line. In this entire answer, the Mississippi interests do not concur (Rec., 49).

The answer to question No. 7 is, no.

The answer to question No. 8 is: The conference is unable to agree.

The answer to question No. 9 is, no as to the first question and yes as to the second question (Rec., 49).

The answer to question No. 10 is: An agreement cannot be reached.

The answer to question No. 11 is: No, the readjustment should be made upon the theory of establishing a just and reasonable basis of rates on these commodities, regardless of whether an increase or decrease of revenue in the aggregate may result. Mr. Martin on behalf of the Mississippi Railroad Commission voting in the negative (Rec., 49).

Under paragraph 12, the conference gave consideration to the matter of minimum carload weights, and agreed that the following minimum weights be prescribed for uniform application in the Southern territory, namely: 90 per cent of marked capacity of car, except where cars are loaded to full visible capacity, actual weights shall apply (Rec., 50).

The conference discussed the procedure and agreed that the order of procedure should be decided upon by the presiding Commissioner (Rec., 50).

[fol. 14] Mr. Cotterill: It was suggested that the complainants in the formal complaint cases proceed first. That is agreeable to us and we are ready. (Rec., 50).

Commissioner Lewis: That is our view also and you will therefore proceed (Rec., 50).

The National Crushed Stone Association intervenes (Rec., 51).

Mr. Cotterill: There are two formal matters affecting the pleadings, which the complainants would like to have disposed of at this time. In the formal complaint drawing in the question the relationship of charges from certain points in Alabama to the State of Mississippi in contrast with the charges prevailing within that state, the Yazoo & Mississippi Valley Railroad was inadvertently omitted as defendant. To amend the complaint at this time against the objection of that carrier would have been without avail. To meet that difficulty, I have taken the matter up with counsel for the Yazoo & Mississippi Valley Railroad who consents to showing that railroad as a party defendant, with the one reservation, that no claim of reparation is made against it. I therefore move to make that carrier a defendant to that case (Rec., 52).

Mr. Burchmore: I object. The complaint in No. 17763 relates only to alleged violations of section 1 and section 3,

It does not in terms charge violations of section 13. It was mailed by the Secretary of the Commission to the state authorities of Mississippi in accordance with the requirements of section 13. That section is jurisdictional. The failure to serve upon the state authorities complaint which attacks the rates within that state would be fatal to any order. The failure to have served a complaint naming the Yazoo & Mississippi Valley Railroad as a defendant is jurisdictional and cannot be cured by amendment at the hearing (Rec., 53).

[fol. 15] Mr. Martin: I concur in the objection on behalf of the state authorities in Mississippi (Rec., 53).

Mr. Martin: There are several important lines in Mississippi which are not named as defendants, including the Southern Railway, Alabama & Vicksburg and Gulf & Ship Island Railroads (Rec., 56).

Commissioner Lewis: The objections are of record here and we will proceed with the hearing (Rec., 56).

Mr. Cotterill: The other point we wish settled is that the complainants do not contend that there should be any difference in charge as between washed gravel and slag and crushed rock (Rec., 57).

[fol. 16] J. D. Roquemore testified as follows:

I am President and General Manager of the Roquemore Gravel Company, engaged in the production of gravel and sand in Montgomery (Rec., 57).

Commissioner Lewis: I wish to state now that the witnesses will be restricted to statements of fact, and we will leave to counsel the arguments and deductions and analysis (Rec., 57).

There are other companies engaged in the production of sand and gravel in Montgomery and its vicinity. Clay gravel is also produced in the Montgomery area (Rec., 58).

In the Montgomery area, sand is a by-product of the production of washed gravel (Rec., 58).

Washed gravel is used for concrete work in all forms, road work principally, concrete buildings, floors and roads (Rec., 58).

Sand is a filler in concrete with gravel or crushed stone and slag. Sand and gravel do not compete with each other (Rec., 58).

Clay gravel is used exclusively in building roads and competes with washed gravel. They use clay gravel and washed gravel for the same purposes in building roads (Rec., 59).

Clay gravel is used in the construction of roads without the addition of other materials. When washed gravel is used it is generally mixed with other materials, with clay or with sand and cement (Rec., 59).

The current prices obtained by the Montgomery producers for washed gravel range from 50 to 90 cents per short ton; for sand, from 15 to 20 cents per short ton, and for the clay gravel produced in the district, 25 to 30 cents per ton (Rec., 59).

Immediately north of Montgomery are other producing points, Jackson's Lake and Prattville Junction, Alabama, [fol. 17] both of which produce both sand and gravel. Their operations are relatively small. The prices they obtain for sand are not higher than the prices we obtain. With them, gravel is a by-product of the production of sand, just the opposite of what it is at Montgomery (Rec., 60).

Gravel is produced at only a comparatively few points in the south. Sand is produced at many points. There is a potential production of sand throughout the whole Southern territory, either an actual or potential local production of sand in the vicinity of all of the large cities (Rec., 61).

There is competition between washed gravel, slag and crushed rock (Rec., 61).

Cross-examination:

The current price of 15 to 20 cents per ton for sand is not a low figure, but has prevailed for several years (Rec., 62).

By Mr. Mohr:

Q. Is it your idea that there should be a different rate on sand than on gravel?

Objection by Mr. Cotterill; sustained.

By Mr. Mohr:

Q. Is it your purpose to defend a scale of rates of any kind in this proceeding?

Objection by Mr. Cotterill; sustained (Rec., 62).

Clay gravel has got clay in it, and the unwashed gravel that we produce is sand and gravel; instead of containing clay it contains sand (Rec., 63).

The value of 15 to 20 cents a ton which I have given has been our selling price for possibly three or four years. Those were the prices in 1923. The same thing is true of the values given on washed gravel. We have received from 50 to 90 cents per ton for the last four or five years (Rec., 63).

[fol. 18] We come in competition with the shippers at Prattville Junction and Jackson's Lake. I do not know that you would call it a price war, but there has been really an over-production of sand in that district. With the large producers of gravel, sand is a by-product. We have been unable to get away from the short-hauls and have not been able to dispose of it and this has had the effect of putting the price of sand down (Rec., 64).

You can tell the difference between unwashed gravel and clay gravel by observation. The clay is dirty and the sand is clean. There is some clay in unwashed gravel. Unwashed gravel has gravel, sand and clay in it, whereas clay gravel has clay and gravel in it only, and perhaps some sand (Rec., 64).

We sell washed gravel and sand in Montgomery. We get 15 cents, probably 10 cents, a ton on sand more in the City of Montgomery than we do anywhere else. For gravel we get as much on the outside as we do in the city (Rec., 65).

The maximum price we have received for sand in the last few years has been probably 20 cents, except that in Montgomery we get in some instances 30 cents for it as a maximum price (Rec., 65).

We ship to Birmingham, Woodward, and Bessemer, Alabama, a substantial tonnage of sand. We sell sand to the manufacturers of pig iron at Birmingham. I do not think they are using any of our sand for pig iron moulds. I really do not know just what purpose they are using it for. We sell sand also to contractors in the Birmingham district, doing concrete work (Rec., 66).

By Mr. Pope:

Q. Can you give us the tonnage of sand that you have shipped from Montgomery to the points I have named during the year 1925?

A. No, I haven't got it with me. I could get up an itemized list of it.

[fol. 19] Mr. Pope:

Q. Will you do that please?

Mr. Cotterill: That is information which the railroads themselves have. The rules provide a method for seeking the production of documents. If it were the fact that it would require any great effort for the railroads to examine their waybills and supply themselves that information, I would not resist the suggestion that we furnish it, but I am simply trying to avoid the inconvenience and expense of going through our books with the idea in view of having to pick out tonnage from a particular shipping point to a particular destination (Rec., 68).

By Commissioner Lewis:

Q. Wouldn't it be possible for you to make a close approximation of your shipments in 1925?

A. I think our shipments into Birmingham would average between 30 and 50 cars a day.

Mr. Pope: That is a sufficient answer.

We do not sell any sand for the manufacture of pig iron. Our sand will not do to manufacture pig iron with, I know that to be a fact. We have tried to sell it for that purpose and it won't pass (Rec., 69).

The sand produced at Jackson's Lake and Prattville is similar to that produced at Montgomery (Rec., 69).

Our sand production at Montgomery is a by-product and the major product is washed gravel. This does not mean that it costs us less to produce it. In fact, it costs us more to produce it, just as much to produce it, we are compelled to produce it along with the gravel (Rec., 67).

The sand and gravel are both mined together. The character of the washing plant is such that all of our product has to pass through the wash plant. When we finish with

the sand we have already manufactured and washed it. To waste it would cost us more money than it would to sell it (Rec., 70).

We have already gone through all of the operation of properly preparing the sand; then it becomes necessary to go to an additional expense to make it a by-product. [fol. 20] The plants at Jackson's Lake and Prattville produce sand as a product and gravel as a by-product. Their sand deposit does not run as high in gravel as ours does. They were formerly in the sand business and they naturally make some gravel. Their ma-n object is to sell sand. Their market price for sand is only 15 or 20 cents a ton. We are just the reverse of that; we are supposed to be in the gravel business. I would like to go back and say we have sold sand three or four years ago for 30 cents in Birmingham. I think during that year Jackson's Lake was getting 50 cents a ton for sand. In the last year or two, I do not know of any they have sold for that (Rec., 71).

I got the information that Prattville Junction and Jackson's Lake are selling sand for 20 cents, from them direct, where I come in competition with them (Rec., 72). We use all kinds of open top cars for loading sand, the same class as for gravel (Rec., 72).

The two commodities load about the same, to full capacity of the car (Rec., 72). It costs us quite a considerable amount to patch cars for sand. We have to employ sacks and pay pretty good prices for them and then employ labor to patch them. I would say it costs us two or three dollars a car to patch them (Rec., 72).

The scope of territory to which we ship sand from Montgomery would be Birmingham and Atlanta. They are really the only districts that we can ship sand into to amount to anything. Every other place that we try to get into we run up against competition of local sand. Excepting those two markets, we are confined to a 50 and 75-mile radius (Rec., 73).

In the distribution of gravel we go as far as 300 or 400 miles. We ship gravel into Florida and the Carolinas and also into Georgia (Rec., 74).

Clay gravel competes with washed gravel in building roads. It also competes with crushed stone and slag (Rec., 74).

[fol. 21] I do not know what the movement of gravel is to Atlanta. Anything we sell there is at above 50 cents per ton (Rec., 74).

We have quoted within the last two weeks a price of 50 cents on gravel for work in the City of Atlanta.

We have not shipped any gravel into Atlanta within the last three months at a price of 90 cents per ton F. O. B. plant, but we have shipped some at a price of 85 cents. I think we have shipped more gravel to Atlanta at 85 cents F. O. B. plant than we have at 50 cents in the last three years. That price was F. O. B. plant, but less 10 per cent to the men that were selling it in Atlanta (Rec., 75).

We get lots of work at a price of 90 cents direct to the contractor, without commission to a middle man (Rec., 76).

We are quoting more than 60 cents per ton now f. o. b. Montgomery for projects in Atlanta. We offered gravel for the Sears-Roebuck job in Atlanta in the last thirty days at 55 cents per ton and lost it. There are no Georgia producers that produce sand and gravel. They don't produce gravel. They produce materials which compete with gravel (Rec., 76-77).

I should say that probably 33⅓ per cent of our material moves to Florida (Rec., 77).

We also ship gravel to points in Eastern Georgia as far east as Savannah, Brunswick and Charleston, South Carolina (Rec., 77).

The deposits of crushed stone are numerous but are confined to certain districts. There are numerous deposits of crushed stone in Georgia (Rec., 78).

The Georgia producers of crushed stone with which we compete are located around Atlanta. In the Atlanta market we compete with the quarries around Stone Mountain, also at Lithonia, within a distance of about 25 miles of Atlanta [fol. 22] (Rec., 80).

I do not know of any building projects in Atlanta in which crushed stone from Lithonia or Stone Mountain or anywhere within 25 miles of Atlanta has displaced our gravel. My impression is that they are not after that kind of work as much as they are road work. In Atlanta we come in competition with crushed stone more on concrete roads than we do on the building end. I regard crushed stone as a competitor of mine in the city of Atlanta, for construction pur-

poses, but I think their output is more confined at the present time to road and street paving. I suppose they bid on such projects, but I don't know. I don't know if they bid on the Sears-Roebuck job (Rec., 80).

Redirect:

In the effort to distribute our gravel in as wide a territory as possible, we encounter actual or potential competition from producers of competing materials wherever they may be (Rec., 81).

The preponderance of our movement is to points south and east-rather than westward. We have not been able to ship either sand or gravel into Mississippi (Rec., 81).

Objection by Mr. Martin and motion to strike. Objection noted (Rec., 82).

Mr. Martin: My objection goes only to dealing with intrastate rates. I have no objections to his dealing with the interstate rates into Mississippi.

I ask that my objection will go to all similar questions without repeating it.

Commissioner Lewis: It will. As I understand, it is tied up with your motion and will be so considered (Rec., 82).

Mr. Martin: Was a ruling made on Mr. Cotterill's proposed amendment as to the Yazoo & Mississippi Valley Railroad?

Commissioner Lewis: It went into the record, subject to your objection.

Mr. Burchmore: You mean the Yazoo & Mississippi Valley Railroad is a defendant now subject to our objection?

Commissioner Lewis: Yes (Rec., 83).

[fol. 23] I would say that the Montgomery district produces around 1,500 to 1,800 cars a week of sand and gravel. I would say that the *com*pacity is somewhat in excess of that, I would not know just how much (Rec., 83).

Recross-examination:

We have furnished estimates of production and values through the Department of Interior (Rec., 84).

If we shipped from our plant at Montgomery into the State of Mississippi over the Mobile & Ohio Railroad, the

first important town on the Mississippi side of that railroad would be Columbus. There are four plants at Columbus producing sand and gravel (Rec., 84).

We could ship into Mississippi over the Louisville & Nashville Railroad. The first station of any importance on that line is Pascagoula. I would not say there is any big operation in that vicinity, but we come in competition with Hattiesburg down in that territory. Hattiesburg ships over the Gulf & Ship Island Railroad and not over the Louisville & Nashville (Rec., 85).

We can ship into Mississippi over the Frisco. We could get in there if we had some rates. None of the producers in that section are as big as we are (Rec., 86).

I do not see why I could not ship into Mississippi as good as Georgia, if I had the same conditions (Rec., 87).

Witness excused.

[fol. 24] C. E. IRELAND testified as follows:

I am Vice President and Sales Manager of the Birmingham Slag Company, which produces slag at Birmingham, Alabama (Rec., 87).

Slag is also produced at Alabama City, at Vanderbilt, which is a suburb of Birmingham, at Woodward, at Bessemer, and at Ensley, Alabama. They are all iron and steel producing points (Rec., 88).

Slag is a by-product of iron and steel production (Rec., 88).

We ship slag all over the State of Alabama and also into Tennessee, North and South Carolina, Georgia, Alabama, Mississippi, Louisiana and Florida (Rec., 88).

Slag comes into competition with crushed stone, crushed granite, gravel, chert and clay gravel (Rec., 88).

Mr. Gwathmey: There is no formal complaint here which attacks the reasonableness of the rates on slag from Birmingham (Rec., 90).

Mr. Cotterill: Well, as you state it in that way, that is true, but there is a complaint alleging discrimination against gravel from Montgomery in favor of slag from Birmingham (Rec., 90).

Slag encounters competition with the enumerated products at all of the places where those other products are produced in the south (Rec., 91).

The prices of slag range from 20 cents to $1.35 a ton. This wide spread is accounted for by the different grades of slag (Rec., 92). We crush and screen and market slag in different sizes; we also market what we term shovel run or bank run slag. That is, of course, the lowest grade slag (Rec., 92).

The crushed and screened slag has a slight edge in production, not much. The representative average price for that grade of slag is 66 cents per ton f. o. b. shipping point [fol. 25] for the year 1925 (Rec., 92). Crushed rock in the Alabama district is sold for from 65 cents to $1.25 a ton at the plant. In Georgia, coming in competition with it, it sells for from 90 cents to $1.50; in South Carolina, I should say from $1.25 to $2.25. There is no crushed stone in Mississippi. In Tennessee I will say that an average of $1.00 a ton on stone, and it would probably vary from 90 cents to $1.30; in North Carolina, from $1.25 to $1.75. I am giving these just as my recollection of individual competitive jobs which I have covered (Rec., 93).

We also operate through affiliated companies, gravel and sand producing plants. Our principal plant is at Arrowhead, Alabama, 13 miles east of Montgomery (Rec., 94).

In the distribution and sale of gravel and sand from Arrowhead, we encounter the competitive prices of other producers. We find that gravel ranges from 50 to 90 cents and the sand ranges from 15 to 35 cents on an occasional car. These are our prices (Rec., 94).

I have knowledge of the prices of other producers only in a general way (Rec., 95).

The principal area of gravel production in the south is Montgomery and that is the principal place of sand production. The Birmingham district is the principal place of slag production in the south. The principal rock producing sections are in the Birmingham district of Alabama, the rock quarries immediately around Atlanta, because of the Stone Mountain ridge, around Columbia, South Carolina, Macon, Georgia, Stockbridge, Georgia, Piedmont or Portland, Georgia, and Chestatee, Geo[illegible] (Rec., 95).

I would estimate the total production of slag in all of the plants in the Birmingham district as about one million and three quarters tons (Rec., 96).

[fol. 26] I do not think that washed gravel is produced within the State of Georgia. Slag is not produced in Georgia or in Mississippi (Rec., 96).

Cross-examination:

This company ships slag from the Birmingham district into Georgia and sand and gravel from Arrowhead into Georgia. We ship these commodities in competition with producers of sand and gravel and crushed stone who are located within the State of Georgia (Rec., 97).

By Mr. Walker:

Q. Is your rate on slag from Birmingham into Georgia and Mississippi the same as the rate on gravel?

A. In some instances yes, and in some instances, no.

Q. Do you think there should be the same rate on slag of all values?

Mr. Cotterill: I object to that question.

Commissioner Lewis: The objection is sustained (Rec., 97).

The Montgomery district is the largest single producing point of sand and gravel in southern territory. The materials are produced, however, at numerous points throughout the territory. Tennessee is a large producing territory of crushed stone (Rec., 97).

We are not interested in any other sand or gravel producing company other than that at Arrowhead (Rec., 98).

I have heard that there is a production of crushed limestone in Cullman County, Alabama, but I have never come in competition with it. I inadvertently failed to mention the stone quarries in the vicinity of Russellville, Alabama (Rec., 98).

The price of 66 cents per ton in 1925 is the average price of our actual sales figured on the gross weight and the net revenue (Rec., 98).

[fol. 27] I was in the crushed stone business for twenty years before I went into the slag business. The lime rock deposits vary considerably in the different states, the costs

of explosives will vary in the different deposits in blasting down to the point where it can be crushed, likewise the condition of stratification. The granite quarries around Columbia, South Carolina, necessarily because of the nature of their deposits and the hardness of the rock, have a higher cost of production than a limestone deposit. A lime rock producer in drilling and shooting lime rock which is semi-stratified, naturally uses less explosives and much less labor and power in the way of steam shovels and to load and to prepare it for commercial market. Of course, local labor conditions, water, fuel, and all those things enter into the cost of production, and naturally the cost of production materially enters into the sale prices (Rec., 100).

The sale prices are f. o. b. the quarries.

In my estimates I have included the material known as dolomite, which is a crushed stone. It is used in the smelting of iron and steel (Rec., 100).

We ship sand and gravel from Arrowhead but not to Birmingham or Woodward or any point in the Birmingham district (Rec., 101).

Our plant at Arrowhead is not the only sand and gravel operation that we have; we have another at Chehaw (Rec., 101).

By Mr. Brooker:

Q. Isn't it also true that you expect to establish an operation at Montgomery?

Objection by Mr. Cotterill; sustained.

Slag is a by-product of blast furnaces; it is our chief production. I think we have sold sand for one or two jobs for 10 cents per ton (Rec., 102).

In stating the prices of crushed stone in Georgia, I get [fol. 28] my information from my representatives in the field. I am not concerned particularly as to the shipping point. I have heard of prices of 90 cents and of less than $1.10 a ton quoted on granite stone produced at quarries near Atlanta (Rec., 103).

In marketing our slag, I don't know that I could name a specific point as our chief competition. We encounter some competition with gravel at Montgomery, but not any more than with any other source of supply (Rec., 103).

There is a slag producing plant at Copper Hill, Tennessee, which is the only slag plant in the south outside of Alabama. The Woodstock Slag Corporation of Birmingham had 2 plants, one at Vanderbilt and one at Woodward, Ala. The Sloss-Sheffield Co. have one crushing and screening plant at the city furnaces in Birmingham (Rec., 104).

We ship slag into Mississippi over every railroad that goes into Mississippi and we ship clear across the state (Rec., 104).

There is a standard price on slag, always has been, that may be regarded as the prevailing market price. There is a standard price now for sand and gravel, but there hasn't always been. Market conditions and competitive conditions have a material effect on prices.

Slag comes into competition with chert and clay gravel in the cheaper type of road construction. The two commodities are used in identically the same way (Rec., 105).

There is no competition between sand, as a road building material, and slag, as a road building material (Rec., 105.)

They do compete in making concrete, if you are going to be technical (Rec., 105).

Offhand I would say that gravel is produced at six points in southern territory and sand at probably sixty or maybe 600 points. I am grouping your plants at Columbus as a point, Greenville, Mississippi, as one, Hattiesburg as one, etc. I overlooked the State of Mississippi. I would say that there are not over twelve points at the outside which produce gravel in the south (Rec., 106).

Witness excused.

[fol. 29] J. L. GRIFFITH testified as follows:

I am traffic manager for the Dixie Sand & Gravel Company at Chattanooga (Rec., 108).

Approximately 50 per cent of our total production is consumed in Chattanooga or by truck deliveries. The remainder of the production is transported by railroad. It is our endeavor to make as extensive and wide distribution by railroad as we can (Rec., 108).

The price of gravel within the Chattanooga district, truck deliveries, ranges from about $1.00 to $1.10 per ton. Where

railroad transportation is used it ranges from 40 cents to 75 cents (Rec., 109).

Sand produced at Chattanooga sells at from 90 cents to $1.00 per ton for local deliveries in Chattanooga, and at 30 cents to 65 cents per ton f. o. b. Chattanooga when for deliveries at outside points by railroad. This is washed gravel and washed sand (Rec., 109).

The area in which we attempt to distribute sand and gravel ranges according to the competitive conditions under which we are able to obtain business at specific points. Ordinarily, the area would be within 200 to 250 miles (Rec., 110).

Q. If there be a parity of transportation costs as between you and your competitors, is it the effort of your company to distribute as far as your costs of production and the railroad transportation costs would enable you to go?
A. Yes, sir.

Cross-examination:

We ship sand and gravel from Chattanooga into Georgia, but not extensively. The freight rate will not permit us to. That is what we are complaining about (Rec., 110).

Q. Do you come into competition at points in Georgia [fol. 30] with producers of sand and gravel located within that state?
A. Yes, sir.

By Mr. Cotterill:

Q. Not as to gravel, you mean sand?
A. I mean as to sand.

By Mr. Gwathmey:

Q. Do you as to gravel?
A. Not so much as to gravel as to sand, but gravel does come into competition with crushed stone which is produced within the state of Georgia (Rec., 110-111).

I think my exhibits will show later on that we are shipping into Georgia in competition with producers within that state who have lower freight rates. That is the reason of

our complaint of discrimination. That is one of the things that is keeping us out of Georgia today (Rec., 111).

We do not ship into Alabama to any considerable extent today. One trouble is the available markets within a reasonable range of Chattanooga.

Q. Is there anything wrong with your situation from Tennessee into Alabama to prevent you from shipping into Alabama?

A. Yes, sir, I should say there is.

Q. How is it that you do not complain?

Mr. Cotterill: I object to counsel asking this witness why he did not complain of something else than he did complain about.

Commissioner Lewis: There is no complaint here against the Alabama rates and we will stay out of that state. That is not before us (Rec., 112).

By Mr. Walker:

Q. Did you state you did not ship into Alabama because you had other available markets around Chattanooga?

A. I did not state that, there has never been sufficient business in Alabama for us to actually develop the trade in that state in a vicinity where we could reach (Rec., 112). [fol. 31] If we had a parity of transportation costs, we could increase the scope of our business. We have not a parity with Montgomery. I have some exhibits to show the whole situation which will be filed later (Sec., 113).

(Discussion as to the issues in No. 17763 and the objects of the complaints therein (Rec., 114-117).

We do not now ship from Chattanooga into Mississippi. The principal railroads from Chattanooga to Mississippi include the Southern Railway, Alabama Great Southern, Central of Georgia, and Nashville, Chattanooga & St. Louis. The Alabama Great Southern would be the direct route to Southern Mississippi and the Southern Railway to Northern Mississippi (Rec,, 118).

We produce washed sand at Chattanooga. We have no market for sand in Birmingham, but if we shipped there I presume we would come in competition with Montgomery sand, as well as others (Rec., 119).

Sand is not a by-product of the plant at Chattanooga (Rec., 121).

Witness excused.

[fol. 32] J. H. ALDREDGE testified as follows:

Mr. Cotterill: I tender in evidence as Exhibit No. 1 a bound document containing a number of sheets which should be numbered consecutively from Sheet 1 to the end. Distribution has been made. It is suggested that the pages simply be numbered consecutively, regardless of the number of sheets in each particular exhibit. Attention is called to the fact that in this set of exhibits there appear quotations from the testimony of Witness N. B. Wright in a previous proceeding, as well as of Mr. Browder; it is suggested that those pages not be numbered separately, but that those excerpts from the previous testimony be marked 3-A (Rec., 121).

Mr. Burchmore objected to sheet No. 1 of the tendered exhibit, which purports to be extracts from certain decisions of the Commission upon two grounds; first, that the Commissioner had ruled there should be no argument, and that the proof should be limited to matters of fact in the case, the sheet constituting argument and not proof of facts; and second, that if intended by sheet 1 to prove the facts that were said to have been stated by the Commission in those decisions, it is secondary evidence and is not competent because it is not the best evidence of those facts (Rec., 122).

Commissioner Lewis: I think we shall overrule the objection. Certainly it is a different character of evidence from that which I had in mind, and which you well know I had reference to, namely testimony that goes into argument in certain portions (Rec., 124).

Mr. Burchmore noted an exception. He thereupon objected to sheet 3-A of Exhibit 1 which purports to be the testimony of Mr. Wright and Mr. Browder given for the carriers in another case and exhibits filed by them in that other case. The ground stated for the objection was that it is incompetent, with no opportunity of cross-examination and the witnesses were responsible traffic officers of

these railroads who were available as witnesses herein (Rec. [fol. 33] 124).

Commissioner Lewis: I am going to shorten up this. Mr. Burchmore, you are overruled again, this is certainly within the rules, and we will proceed.

Mr. Burchmore noted an exception.

By Mr. Cotterill:

Q. Mr. Aldredge, were the 28 sheets constituting Exhibit No. 1 prepared by you or under your direction?

A. They were.

Q. To the best of your knowledge and belief, are the facts therein contained correct and true?

A. They are.

Mr. Cotterill: We tender the exhibit in evidence (Rec., 125).

Mr. Gwathmey: Before the exhibits are finally received, I think that the parties should at least have an opportunity to look them over. Can they not be received subject to such objection as the parties may have to make in the hearing?

Commissioner Lewis: I think so, that is entirely agreeable to the Commission (Rec., 125).

Mr. Cotterill: Now, distribution has been made of one sheet consisting of a comparison of the freight revenue and passenger service and other revenue and other statistical items which appear in the caption. Was that exhibit prepared by you or under your direction?

A. It was (Rec., 126).

Mr. Cotterill: I tender it in evidence.

The exhibit was received subject to subsequent objection.

Cross-examination:

In several places in Exhibit 1 is shown a column headed "Carriers' present proposed scale". Along about the year 1917 the principal class 1 carriers of the southeast, with the exception of the Louisville & Nashville Railroad, pro- [fol. 34] posed to the Georgia and Alabama Commissions a general revision of intrastate rates on classes and commodities, included within which was a scale on sand and

gravel and related commodities. Substantially that same proposal was submitted to the Interstate Commerce Commission in the Meridian Rate Case, and it was stated by the carriers at that time that it was designed to harmonize state and interstate rates, and would be applied interstate when the state commissions acted. That proposal after the Interstate Commerce Commission had adopted it in all essential particulars in the Meridian Rate Case, was later withdrawn from the Alabama and Georgia Commissions by the United States Railroad Administration. Now, in 1921 these carriers came back to the Georgia and Alabama Commissions in response to a citation, and proposed another general revision of rates, and proposed a different scale of rates on each particular commodity, and it is that proposal which they stated they expected to apply state and interstate, and which they have applied in various and sundry interstate adjustments, that we now call their present proposed rates, and we refer to the one they previously proposed as the original proposed rates. That is what I mean by present proposed rates (Rec., 128).

By Mr. Watkins:

Q. May I ask while you are on that, how he got the carriers' original scale, the 1907 scale?

A. I have just stated it.

Q. No, you didn't state, you stated they offered it, now did they offer this specific scale, or did they offer Class P rates with a minimum of 36,000 pounds, and have you reduced the carload to a per ton charge, is that it?

A. No sir, not in Alabama, Mr. Watkins; I went back to our original records, and I have got that original scale just as it was proposed here, I also show it as it has been increased by the general advances and reduced by the reduction, they are both there (Rec., 129).

[fol. 35] Q. There are no specific scales in Alabama?

A. Yes sir, I understand there is also a specific scale in Georgia, they told us it was there, that is the basis on which they asked us to act (Rec., 129).

Mr. Gwathmey: I don't for a moment want to ask any questions that infringe on the Commissioner's idea about eliminating argumentative discussions, but I would like to

ask Mr. Aldredge to state briefly if he can just what the purpose is of this extract from certain testimony taken eight years ago, or in 1918, in some case before the Alabama Commission (Rec., 129).

Mr. Cotterill: Mr. Gwathmey, would it serve your purposes just as well if I assume the responsibility of answering as to the purposes of that exhibit? (Rec., 129.)

Mr. Gwathmey: Yes.

Mr. Cotterill: The data contained in that exhibit is construed as an admission against the carriers' interest, so far as concerns the issues of the present day (Rec., 130). It explains the circumstances, in the view of the carriers, surrounding their proposal as to the original scale (Rec., 130).

By Mr. Gwathmey:

Q. Mr. Aldredge, when this 1917 scale was proposed to the Alabama and the Georgia Commissions, was it not understood and stated on the carriers' behalf that those scales were proposed to be used as minima in revising the interstate rates? (Rec., 131.)

A. Do you want my recollection on that?

Q. Yes.

A. No, I think they were as maxima.

Q. You are speaking, however, from recollection and without having investigated that record, I take it, for the purposes of this present inquiry?

[fol. 36] A. I did not go into all the details of that record, but I participated in the case, and I have a pretty fair recollection of it (Rec., 131).

It is a fact that the scale suggested by the Louisville & Nashville Railroad is higher than the scale set forth on sheet 4 as the carriers' scale before the Alabama Commission. The Louisville & Nashville did not make any proposal in 1917 (Rec., 132).

Mr. Mohr objected to page 22 of Exhibit 1 and moved that it be stricken from the record, in which motion Mr. Gwathmey, Mr. Martin and Mr. Walker joined.

After discussion of the argumentative features of the page and a ruling by the Commissioner that certain portions of it were eliminated, Mr. Cotterill withdrew sheet No. 22 from the exhibit (Rec., 135).

By Mr. Martin:

Q. May I ask for whom you are appearing in this case as a witness, Mr. Aldredge?

A. I show it on the exhibit.

Q. Well, are you testifying here on behalf of the Alabama Commission? The reason I ask, I understand you are officially connected with that body.

A. Sure, partly on behalf of the Alabama Commission.

Q. And this is the testimony of the Alabama Public Service Commission?

A. This is my testimony; the Commission does not testify.

Q. Is it approved by the Alabama Public Service Commission?

A. They told me to appear here.

Q. Did they approve these figures?

A. I did not submit them to the Commission for official action.

(Witness temporarily excused for cross-examination later.)

[fol. 37] A. J. Rise testified as follows:

I am traffic manager for the Birmingham Slag Company of Birmingham and the Montgomery Gravel Company of Montgomery (Rec., 139).

Exhibits which have been distributed to the parties and to the Commission and which I have before me were prepared by me or under my direction and are correct, excepting for two errors:

On Exhibit No. 3, under the columns headed "Proposed", opposite distance of 130 miles, the rates should be $1.05 and 95 cents, instead of $1.25 and $1.15. On Exhibit No. 13, the second line opposite Lineville, the last column should show minus 15 instead of plus 15.

Cross-examination.

By Mr. Gwathmey:

Q. Do I understand that these exhibits are filed in support of the complaint of the supporting interveners, as stated in the caption of the exhibits? (Rec., 140.)

A. Yes sir.

Q. In your opinion are the rates on slag from Birmingham unduly favorable to the Birmingham shippers, in comparison with the rates on sand and gravel from Montgomery? (Rec., 140.)

Mr. Cotterill: The question in the way it was phrased asks for a matter of opinion, and I think to be consistent I must object to the question.

Mr. Gwathmey: I understood him to qualify as an experienced traffic man (Rec., 140).

Mr. Cotterill: No, I don't think he was qualified as that at all.

Mr. Gwathmey: If Your Honor please, the same question came up in connection with the testimony of a previous witness who was connected with the Birmingham Slag interests, at that time the question was raised and settled, as I understood it, as to whether there is any issue here as to [fol. 38] the reasonableness of the rates on slag from Birmingham to the destinations covered by these complaints. I don't understand that any complaint brings that question into issue. This witness states that he is appearing as an intervenor in the complaint filed by the Roquemore Gravel Company, a concern located at Montgomery. That complaint alleges that the rates from Birmingham on slag are unduly preferential to the Birmingham shippers, and prejudicial to the shippers from Montgomery. If this witness has been introduced, as his counsel says he is, as the witness in support of the complaint, I submit that I certainly have the right to ask him as to his position and his opinion as to whether the allegations of that complaint are sustained? (Rec., 141.)

Mr. Cotterill: If Your Honor please, if he had been content to prepare the data it would have been my right to have picked up any man on the street and brought him here to prove certain facts which are admittedly relevant to the issues in the proceedings. That is all this witness has done. At the top of each exhibit, there is a designation "Complainants" and supporting intervenors' exhibit." That has no significance other than consistency with the wishes of the Commission, in order that the inspiration and source of the exhibits be identified as between the parties to the case, that notation was put uniformly on all of

the exhibits. I see no connection between that designation as to which side of the case the exhibits are being presented for on the one hand, and the question of which this witness as an officer of one of the interested companies contends for or believes on something as to which he has an opinion (Rec., 141-142).

Mr. Gwathmey: I have a right to have this witness make a statement on this subject since he has qualified as an officer of the Birmingham Slag Company and appears as a witness in support of the claim of discrimination in favor of his own company (Rec., 142).

[fol. 39] Mr. Cotterill: He has not appeared as a witness in support of anything, he has come to prove certain facts. He proved the making of these exhibits (Rec., 142).

Mr. Gwathmey moved that all of the exhibits be excluded on the ground that they have not been presented by any duly qualified witness. Mr. Martin and Mr. Mohr joined in the objection.

Mr. Cotterill: The witness has simply testified that the exhibits were prepared by him and under his direction; the question of qualification has not entered into it at all (Rec., 143).

Commissioner Lewis: I have glanced through the exhibits and they seem to be a presentation of a great deal of statistical matter, the present and proposed rates, etc. We will accept these exhibits and you can cross-examine the witness on them.

Exhibits 8 to 27 were thereupon received in evidence.

Mr. Burchmore reserved an objection to four pages and the exhibits were received subject to such objections, to be made specific thereafter (Rec., 144).

Mr. Burchmore objected to Exhibits 17 and 19, as being taken from an unofficial source, being an extract from an exhibit in another case. Consideration of the objection was deferred until later by stipulation (Rec., 145).

Mr. Burchmore objected to Exhibit 20, being a comparison of specific commodity rates from Memphis to points in Mississippi and Tennessee, on the ground that the cases on hearing do not involve any averment of discrimination or discrepancy in the rates from Memphis to points in Mississippi versus Memphis to points in Tennessee, being en-

tirely outside of the issue in these cases. He made similar objection to Exhibits 21 and 22.

[fol. 40] Mr. Cotterill stated that the exhibits were presented simply for comparative purposes (Rec., 146).

Mr. Gwathmey: Mr. Commissioner, I really don't want to appear in the attitude of a continuous objector, but this method of proceeding which Mr. Cotterill has seen fit to adopt here forces us to raise these questions as quickly and as promptly as we can and perhaps do it in a somewhat scattering manner. Now, here is a feature of this set of exhibits that I notice right now, Exhibit No. 15 (Rec., 147).

Exam. Waters: Are you gentlemen going to cross examine this witness later?

Mr. Burchmore: I was not going to do it.

Exam. Waters: Why are you making all these objections?

Mr. Burchmore: Because I am sure they intend an attack on us not covered by the complaints, and which I want to defend against.

Exam. Waters: You are going to cross examine him later?

Mr. Buchmore: No sir, I am not going to ask him a question unless I am forced to do so by the tactics of other people here, that I can't help; but I make this objection to Exhibit No. 21, and I also want then to make the same objection to Exhibit No. 22, and if the Commissioner will rule, I will accept his ruling or make an exception thereto, 20, 21 and 22.

Mr. Cotterill: My reply is the same, those exhibits are tendered for comparative purposes (Rec., 147).

Commissioner Lewis: Mr. Cotterill having stated that Exhibits 20, 21 and 22 are limited to their use for comparative purposes, with such a limitation on the record, we will accept them (Rec., 149).

Mr. Gwathmey: Certain of these exhibits are apparently irrelevant because they relate to rates that are not at issue [fol. 41] in the case. Exhibit No. 15, for instance, shows proposed rates fom Montgomery, Alabama, to various points in that state. I do not understand that the general level of intrastate rates in Alabama is at issue here (Rec., 149).

Mr. Cotterill: The title to Exhibit 15 is susceptible of misunderstanding which should be cleared up. It is intended only as a comparison between certain charges prescribed by the Alabama Commission for various distances, on the one hand, and a certain mileage scale proposed by the complainants in this case within the scope of these cases. The rates from Birmingham are here in issue under Section 3 (Rec., 150).

Mr. Cotterill: I intended Exhibit 15 as a comparison between the mileage scales proposed by the complainants and those published by the Alabama Commission. The same is true of Exhibit 26. Does that meet your objection?

Mr. Gwathmey: If the issues are clearly understood, I have no objection to putting in the proposed rates in that way.

The Birmingham Slag Company has been in existence twelve years or longer and has been continuously after the carriers for rates on slag out of the Birmingham district. The sand and gravel business at Montgomery is of comparatively recent origin. Their big production started about the middle of the war. We have commodity rates on slag out of Birmingham district and there are not rates on sand and gravel out of Montgomery on a relative basis. We are absolutely in agreement with the complainants that the shippers of gravel are entitled to rates on a relative basis with slag, all conditions being approximately the same (Rec., 154).

Witness temporarily excused, for cross-examination later.

[fol. 42] J. L. Griffith, recalled, testified further as follows:

Exhibits 28 to 33 were prepared by me and the facts therein contained are correct (Rec., 155).

Mr. Gwathmey requested that cross-examination on the exhibits be deferred to give counsel an opportunity to examine them. This was agreed to (Rec., 155).

Commissioner Lewis: It seems to me, Mr. Cotterill, it would be enlightening to all parties if the witness would

state his purpose in the introduction of these exhibits; we are pretty much in the dark ourselves.

Mr. Cotterill: It will be observed that at the top of each exhibit there is a description of the contents which was thought to be informative as to the purposes of each exhibit (Rec., 156).

Mr. Cotterill: When it come to a statement of contentions, or as to a conclusion, I was going to say that had there not been excluded the explanatory comment which was contained in Mr. Aldredge's exhibits, this heading would probably easier be understood; suffice it to say that the exhibit indicates existing rates, as described on the face of the exhibit. Now then, as to what conclusions the complainants draw from the evidence as a whole, it has been indicated that as to the items of gravel, washed, slag and crushed rock, it is their conclusion that there should be a similarity of charge (Rec., 156). As to clay gravel, sand and chert, the conclusion was that a rate differential of a specific amount ought to be made (Rec., 157).

Mr. Mohr requested an answer to his former question, propounded when the witness was first on the stand (Rec., 113), as to the disparity, if any, of rates into this territory from Chattanooga, and after discussion between counsel, the witness testified:

[fol. 43] This Exhibit, No. 28, was prepared to show discrimination against Chattanooga shipping into the other territories, and does not show what we propose. I had exhibits prepared on that, but eliminated them to avoid duplication, as similar exhibits had been prepared by other complainants. It will be noted from the exhibit that we have considerably higher rates from Chattanooga to points on the N., C. & St. L. Railway in Georgia shown in Column 1, than apply within Georgia to other points of like distance. The same holds good of rates shown in columns 11 and 12, which apply from Chattanooga to points on the Central of Georgia and Southern Railway, respectively (Rec., 160).

The rates shown in columns 2, 3, 4, 5 and 6 on Exhibit 28 do not apply from Chattanooga stations on the Atlanta Division (Rec., 161).

There are from Chattanooga a great many specific stations like Dalton and Rome, Georgia, for instance, to which

there are specific rates in effect that are entirely different from those shown in column 1 (Rec. 162).

The rates shown in columns 1, 11 and 12 apply from Chattanooga only where there are no specific rates in existence (Rec., 162).

We contend that the Georgia rates have created discrimination against Chattanooga at points in Georgia. We are hurt at any point in Georgia where those rates apply. I could not begin to enumerate offhand the points to which we were shipping in Georgia before the Georgia rates went in. The rates from Chattanooga to Atlanta are on the same level as the rates from Georgia points to Atlanta (Rec., 163).

We do not ship any tonnage to Macon. I could not say whether we do business at Griffin or Athens (Rec., 164).

There are numerous points on the Central of Georgia, for instance, between Chattanooga and Rome, and local points on the N., C. & St. L. Railway, where there are no through rates published and they are on a considerably higher scale [fol. 44] (Rec., 164).

All movements over the N., C. & St. L. Railway from Chattanooga, both southward into Georgia, and north into Tennessee, are interstate, excepting for four or five miles out of Chattanooga, because the N., C. & St. L. Railway after it leaves Chattanooga dips into Alabama on its way northward (Rec., 164).

Cross-examination of the witness was deferred.

Mr. Cotterill: That is all the witnesses for the complainants. When our minds are fresher tomorrow, I shall have a motion to make with respect to the prodution of some data desired to be used by the complainants, but as to the witnesses, this is all the witnesses the complainants will have on the direct presentation of the case (Rec., 165).

[fol. 45] February 17, 1926.

H. T. Youmans testified as follows:

I reside at Ellenton, South Carolina, and I am Superintendent and General Manager of the Ellenton Gravel Company, producing clay gravel (Rec., 168).

Ellenton is on the Charleston & Western Carolina Railway, 22 miles out of Augusta, on the Port Royal Division (Rec., 168).

There are other operators in this general territory. There is one nine miles below us at Steele's Creek, South Carolina, and another on the Savannah River about 15 miles above us. Both points are on the Charleston & Western Carolina Railway (Rec., 169).

Our plant is four or five miles from the river, which forms the Georgia state line (Rec., 169).

Our company has been operating at Ellenton about two years and has been operating for eighteen years on this line of railroad (Rec., 169).

In the years prior to 1925, the company shipped any quantity of sand and gravel from its plant into the state of Georgia reaching the coastal section, Savannah, Brunswick, Waycross, Jesup, Valdosta, and some as far as Quitman. We have been shipping gravel into Georgia for fifteen or sixteen years, the heaviest shipments being in the last six or seven years, since the State Highway Department has been functioning (Rec., 170).

We cannot ship gravel into Georgia at the present time. We stopped shipping into Georgia April 1, 1925 (Rec., 170).

During March, 1925, I had an order from the State Highway Department, for something over 20,000 tons and was shipping at the rate of 700 to 800 tons daily, about 15 to 18 [fol. 46] cars. On March 27, I had a letter notifying me that the rates would be lowered April 1st by the Georgia Public Service Commission sufficiently to make the Georgia gravel man lower on a delivered price, and it would be necessary to cancel my order, which they did. I have the telegrams and letters in my pocket, the original signed order and the letters canceling the contract (Rec., 170).

It made a difference of 25 cents a ton in the delivered price as compared with the price of shippers located in the State of Georgia (Rec., 171).

Other operators along the line of the Charleston & Western Carolina Railway had the same experience. They too have been excluded from Georgia (Rec., 171).

If our rates from our plant interstate into Georgia are on the same level with the rates intrastate in Georgia, we can ship to some parts of that state. We advocate a parity of the rates, interstate as against intrastate (Rec., 171).

I have been in business for eighteen years and as the rates now stand, I am barred from the states of South Carolina and Georgia. I am an equal partner in the plant at Ellenton and have $30,000 tied up in it. My competitors have the advantage of me in Georgia and South Carolina and it looks like I will be forced out of business. If there was any gravel going west from Carolina, I would have some advantage over my competitors, but I only have 22 miles of railroad until I get into Georgia, and they have me shut out of the west. I tried all last year to get to Aiken, S. C., and Edgefield and different parts, but we can't go through Augusta. There is no gravel moving that way.

Cross-examination:

[fol. 47] I participated in a hearing before the Interstate Commerce Commission at the time when the railroads issued tariffs to increase my rates from Charleston & Western Carolina points in Georgia and Florida. My rates were substantially increased. They have been increased two or three times. The rates that I am operating under today to points in Georgia are the rates that were put in in that case (Rec., 173).

The Southern Paving Gravel Company is located at Beach Island, South Carolina. They are shipping very little material. They quit about the same time I did, shipping into Georgia (Rec., 174).

After the decision in the C. & W. C. case, we sold out our plant. The freight rates affected us and we had other reasons also (Rec., 174).

The mileage scale has been in effect in South Carolina since 1922, but it was not applied on the C. & W. C. until 1924, after that I sold out my holdings at Steele's Creek and moved to Ellenton. I haven't any competition except at Steele's Creek and W. N. Todd, Myers Hill, S. C. (Rec., 175).

I understand this mileage scale has been in effect in South Carolina since 1922, but it wasn't applied on the C. & W. C. until 1924. The mileage scale was applied 60 or 90 days after we moved to Ellenton. We have two miles of standard railroad track, a standard locomotive engine, 150 acres of property, with about 50 acres of gravel. When I began to load, I found that the mileage scale had been

applied, and could not ship, because of this difference of 10 cents per ton, to customers to whom I had been selling for eighteen years (Rec., 176).

The rates from our plant to points in Georgia are higher than under the Georgia scale (Rec., 177).

[fol. 47-a] As to whether I would rather have applied from my plant the basis between Georgia points, or the rates which are now in effect and which are on a higher basis: I would rather have the lower rates. I would probably do some business if I had a competitive rate to get into Georgia either on the South Carolina scale or the Georgia scale. I don't want any advantage over any of my competitors but I don't think I should be shut out of business after being a shipper on this line of road that shipped the volume of tonnage that I have. The records will show that I have shipped as far as Waycross, Ga., as much as 1100 or 1500 cars in one shipment. I have some through rates from my stations to Seaboard Air Line points. Any rates that I can ship into Georgia on is the same importance to us in South Carolina. Those rates were ordered in by the Interstate Commerce Commission in that last decision (Rec., 177).

[fol. 48] I have a list of destinations on the Southern and Seaboard Air Line. In South Carolina we had a stretch of practically 75 miles of state highway. They were figuring on using clay gravel and I understood I might get some of the business. There were some important shipping points on the Seaboard. I went to Mr. Williams of the C. & W. C. Railroad to see if we could get in touch with the Seaboard to put us in some rates where we could do some business, because at present we have no rates, and we can't (Rec., 178).

The selling price of our material is 35 cents a ton f. o. b. the pit (Rec., 179).

Mr. Williams promised to handle this matter with me and I think discussed it yesterday with the Seaboard Air Line man. It seems if these rates are put in, there will probably be some difference of 5 or 10 cents between points on the Seaboard and our pit in the Carolinas. That 5 or 10 cents will knock me out again (Rec., 179).

I ship nothing but clay gravel (Rec., 180).

I have the original order for the 20,000 tons and the cancellation of the order which I would like to display for somebody's inspection. The letter cancelling the order is

dated April 1, 1925, and is from the State Highway Engineer (Rec., 180).

Under the rates which I now have I cannot meet competition even in South Carolina, neither can I meet it in Georgia on account of this low scale in Georgia since April 1st. In Georgia, I have from 11 to 15 cents difference because I have to deliver at job around Savannah and Brunswick and my competitor has 10 to 15 cents advantage of me (Rec., 181).

My only competitors are Mr. Todd at Myers Mills, South Carolina, on the South Carolina side, and Mr. Graves, on the Georgia side. My South Carolina competitor has the advantage of me in South Carolina and my Georgia com-
[fo. 49] petitor in Georgia (Rec., 181).

My production for the last two or three years has been from 2,000 to 3,000 cars. It has gone as high as 5,000 cars in one or two years (Rec., 182).

I have been in business eighteen years and have been shipping to the State Highway Department since they were organized. Before that I shipped to the county commissioners. Prior to April 1st, I had an advantage over the Georgia producer, Mr. Graves, to some of the coastal points around Savannah and Brunswick. That was where my principal movement was. My rate to Waycross was at one time $1.02. It is now $1.49. At one time it was on a yardage scale, per cubic yard, and now it is on a tonnage basis. Mr. Graves is nearer Waycross, there is not much difference in our mileage. I could not say whether Mr. Graves has ever had a rate as low as $1.02 (Rec., 183).

Mr. Graves had the advantage of me prior to April 1, up in this Macon territory and on the Georgia Railroad and down to Valdosta. He probably has some advantage in distance. I have not searched the distances. All I am asking is to be placed on a parity with my competitors (Rec., 184).

Mr. Graves is in business at Norris, Georgia, on the Georgia Railroad. He had no advantage of me at Savannah prior to the change; my rate now is $1.17 and his is $1.20. That is the only point in Georgia where I have an advantage at this time (Rec., 184).

I appealed to the South Carolina Commission for relief in regard to my intrastate South Carolina situation.

They stated to me that this mileage scale had been in effect in South Carolina since 1922, and they couldn't do anything. Id did not ask for a hearing (Rec., 186).

Witness excused.

[fol. 50] J. H. Brown testified as follows:

I am in the sand business, operating in the name of Central of Georgia Sand Company, with pits at Howard, Georgia, on the Central of Georgia Railway and at Greenfield, on the Atlanta, Birmingham & Atlantic Railway (Rec., 187).

Most of our shipments go to Birmingham; I should say about 95 per cent (Rec., 188).

The average selling cost of our sand f. o. b. cars at the pits in 1925 was 22.5 cents a ton. Our profit on that basis is about 7 cents, not including the value of the sand in the bank. I think the sand in the bank is worth about $1.00 a car or 2 cents a ton. On that basis, our net profit at the prevailing price has been about 5 cents a ton (Rec., 188).

We have the same rates into Birmingham as are now in effect from Jackson's Lake and Montgomery, Alabama. This parity has existed for many years and our sand business has been built up on it (Rec., 188).

A differential of as much as 5 cents per ton in the same rates, from Jackson's Lake and Montgomery, as compared with Junction City and Howard to Birmingham, would probably prohibit us from shipping to Birmingham (Rec., 189).

I think most of the sand we ship to Birmingham is used by the steel plants, moulding, such as the Schloss Company and the Tennessee Coal, Iron & Railroad Company. It is used and specified for road building purposes (Rec., 189).

We have two locomotive cranes. We load open top gondola coal cars of all kinds, that is, the empty coal cars that are returned to the mines for being loaded. If they do not get sand they go back empty (Rec., 190).

We wash a small amount of our sand, about 6 cars a week is washed for special purposes. The balance of it we dig right out of the bank and load right into the cars. It is the sole product of our plant, not a by-product (Rec., 190).

[fol. 51] Our rate to Birmingham is 79 cents per ton. It has been in effect for quite a while, five or six years, Prior to that time it was 52 cents (Rec., 191).

Our competitors are located at Montgomery, Jackson's Lake and Prattville Junction. Our sand is used for moulding purposes, a good deal of it is, but not exclusively. I am not familiar with any other producing point that ships sand that is suitable for moulding purposes (Rec., 191).

The country around Howard, Georgia, is the poorest land in the State of Georgia, so poor that trees won't grow there. If it wasn't for this industry we would have to move. The sand industry at Howard is the principal source of revenue for the people. There are two little grocery stores, but they don't do much business (Rec., 192).

I have been operating at Howard since April, 1903. We have about $30,000 tied up in the investment, composed of two locomotive cranes, and approximately 3 miles of railroad track (Rec., 192).

The population of Howard is about 250 (Rec., 192).

We compete with Montgomery and Jackson's Lake in shipping to Birmingham and we are compelled to meet the prices quoted at Montgomery and Jackson's Lake (Rec., 192).

I do not know that our sand is used exclusively for moulding purposes even when shipped to pig iron furnaces, because they use sand for other purposes (Rec., 193).

We have had a parity of rates from Junction City and Howard to Birmingham, with Montgomery and Jackson's Lake for a number of years, and our investment and business has been built up on that parity (Rec., 193).

Q. The complainants in these cases propose a scale which would result in $1.20 from Junction City to Birmingham, and 85 cents from Montgomery and Jackson's Lake to Birmingham, a difference of 35 cents; could you operate [fol. 52] with a 35 cents differential?

A. No sir, and not on a 5 cents one I don't think?

If we have the same rate I figure we will do some business. If the rate from Montgomery to Birmingham was $1.08 instead of 79 cents, then I think we could operate on a rate of $1.08 from Junction City to Birmingham (Rec., 194).

We ship anywhere from 1,000 to 3,000 cars a year. Last year we shipped about 1,100 cars to Birmingham, and about

250 cars to other points. It was a very dull season; we did not do much (Rec., 194).

The distance from Junction City to Birmingham is 213 miles by the A. B. & A., and 197 miles by the Central of Georgia. The distance from Montgomery is something like 100 miles (Rec., 194).

There is a difference in price of about $1.00 a ton between washed sand and bank run sand. We get $1.25 for washed sand f. o. b. cars, and about 22 cents for bank sand (Rec., 194).

We ship a very limited amount of washed sand. It is used by the American Radiator Company only. We have a small contract, about a car a day for them. In addition to the other investment, we have about $6,000 included in the washing plant which I did not figure when I was talking about the investment in crane and track. We have that washing plant for just one small contract (Rec., 195).

Witness excused.

[fol. 53] CHARLES W. MOORE testified as follows:

I am in the sand business at Junction City and at Morningstar, on the A. B. & A. Railroad (Rec., 195).

We ship from those pits unwashed sand to Birmingham. The average selling price we received for 1925 was 22.5 cents. The cost of that sand loaded on cars at the pit was approximately 18 cents a ton, which leaves a net profit of less than 5 cents a ton (Rec., 196).

About one-third of our tonnage moves into the Birmingham market. It is used almost exclusively for construction purposes. In 1924 we shipped a little pig bed sand, but there was practically none of it shipped in 1925 (Rec., 196).

Our rates are on a parity with the rates on sand moving from Jackson's La. and Montgomery into Birmingham and have been at all times since our business started (Rec., 196).

A differential of as much as 5 cents per ton in the rates from our pits to Birmingham as compared to Montgomery pits to Birmingham would affect me very materially. I don't think we could continue to exist with a difference of as much as 10 cents a ton (Rec., 197).

Sand is the only thing we produce. Our present rate to Birmingham is 79 cents and the same from Montgomery (Rec., 197).

Cross-examination:

We have a considerable investment in sand pits and the necessary machinery. This investment was made in a measure on the parity of rates to Birmingham. Of course, Birmingham is not our only destination. We have had a parity of rates for a number of years with Jackson's Lake and Montgomery (Rec., 198).

On the sand we sold in 1924 for pig moulds, we had to meet the quotations of competitors including the Montgomery sand. The Montgomery people practically control the price in the Birmingham market (Rec., 198).

[fol. 54] If the rate from Montgomery and Jackson's Lake to Birmingham should be $1.08, instead of 79 cents, and our rate should be $1.08, we would be on the same parity as today and could do business. Of course I am interested also in as low a rate as possible. However, I feel like with an equal rate with Montgomery we could operate (Rec., 200).

Sand is produced in South Georgia territory generally. Points like Waycross, Valdosta, or Cordele can get sand sufficient for their demands in the immediate vicinity. Therefore, we would not have occasion to ship sand from Junction City to South Georgia territory only in exceptional cases (Rec., 200).

About one-third of our sand now goes to Birmingham. Practically all of the rest goes to Atlanta (Rec., 200).

I do not know whether a person not familiar with the sand business could tell whether a car loaded with sand was washed sand or bank run sand, because there are different grades of bank sand. Some of it is very clean and pretty and it is the same way with washed sand (Rec., 201).

The two materials take the same rate today (Rec., 201).

Our present rate to Atlanta is 90 cents, the distance is 108 miles. I don't know the rate from Montgomery to Atlanta. Mr. Browder stated $1.10 (Rec., 201).

Witness excused.

[fol. 55] J. H. ALDREDGE, being recalled for cross-examination, testified as follows:

The excerpt which is filed as sheet 3-A to my Exhibit No. 1 was not introduced for the purpose of sustaining my recollection that the rates which the carriers proposed in 1917 to the Alabama Commission were intended for general interstate application (Rec., 202).

It is my understanding of that proposal that it was a complement of the general revision of the southern interstate rate structure which had been begun on fourth section principles, and which has not yet been completed (Rec., 203).

Mr. Gwathmey requested Mr. Aldredge to furnish an extract from the record in the case in question to sustain his recollection of the carriers' proposal (Rec., 203).

Mr. Burchmore objected to the admission of the requested excerpt from testimony as contrary to Rule 13a of the Commission's rules of practice. The objection was overruled (Rec., 105).

Mr. Aldredge agreed to present within ten days an extract from the transcript or from the briefs and other papers in the record. The objection was overruled and the offer was allowed, Mr. Burchmore noting an exception. The matter in question was subsequently sent to the Commission by Mr. Aldredge with letter dated February 26, 1926, was filed of record, and follows Exhibit No. 244 in the copies of exhibits as certified by the Secretary of the Commission in his certificate of April 1, 1930 (Rec., 209).

On sheet 4 of Exhibit 1, the carriers' scales as originally proposed are brought down to date by applying first the general increase under General Order No. 28 of the Director General of Railroads, which was 20 cents per ton, [fol. 56] then the second 25 per cent increase under Ex Parte 74, and then the 10 per cent reduction under Reduced Rates, 1922. I did not personally make the compilations in this exhibit, but I checked it with the scale which is now in effect in the Meridian territory, that has been subjected by the carriers to those same changes, and they are the same (Rec., 210).

Mr. Gwathmey called attention to some discrepancies and the witness agreed to recheck sheet 4, as well as sheets 6 and 9 of the exhibit (Rec., 211).

The rates shown on sheet 7 of exhibit 1 apply only on washed gravel and the scale shown on the left hand side under the column headed "Carriers' original proposed scale in 1917 and 1918", is the flat scale without any subsequent plusing or reductions (Rec., 212).

Through the exhibits there appears the term "Carriers' present proposed scale". That means the scale which has been proposed by the carriers to the Georgia and Alabama Commissions, and it constitutes their standing proposal today which they say and said would be used in making your interstate revision (Rec., 212).

This explanation applies throughout the exhibit wherever I have used the word "present" (Rec., 213).

On sheet 4 of Exhibit 1 we have undertaken to bring the carriers' original scale down to date and Mr. Gwathmey says that a few errors have crept in (Rec., 213).

Sheet 15 of Exhibit 1 shows under the heading "Rates under carriers' proposed scale, extended beyond 400 miles", rates which are an extension of the standard scale and not the rates which the carriers are actually proposing to Florida points. It is just a comparison with what the standard scale would produce if extended to these distances and applied in Florida (Rec., 214).

I did not know that the carriers were proposing in establishing rates into Florida, to use certain proportional rates to Jacksonville and certain proportional rates beyond [fol. 57] Jacksonville, combining the two factors to construct the through rates to points in the Florida peninsula, but it does not surprise me if they are. I assumed that they would perhaps do it in the class rates (Rec, 214).

The distances shown in the first column on page 15 of Exhibit 1 were figured via the routes shown on the next page. I am not familiar with the extent to which the movement into the peninsula of Florida would be via the routes shown. They are supposed to be the short-line routes (Rec., 215).

I know that the Atlantic Coast Line has its own line from Montgomery to Jacksonville, and I assume Mr. Gwathmey is correct, that the distance is something like 390 miles, or greater than the entire distance shown on my exhibit from Montgomery to St. Augustine. But I do not think the public should be forced to pay rates around any circuitous routes. I think they ought to have the benefit of the short-line workable route (Rec., 215).

I think the Atlantic Coast Line from Montgomery to Jacksonville and the route made up of the Central of Georgia to Dawson, the Seaboard Air Line to Albany, and the Atlantic Coast Line thence to Jacksonville, both are workable routes; however, I think the Commission is going to settle this question of routes in the Southern Class Rate Investigation (Rec., 216).

Mr. Cotterill: I believe we are getting a little bit into the domain of debate. The exhibit purports to show the routes which constitute the short-line mileages. The question whether these short-line mileages shall be observed in prescribing the rates is one of argument (Rec., 216).

Mr. Gwathmey: I am questioning the propriety of the distances shown on the exhibit.

Mr. Aldredge: They are the short-line distances as near as we could possibly figure them by open routes (Rec., 216).

[fol. 58] The distance from Montgomery to Tampa is figured via Atlantic Coast Line to LaCoochee and the Seaboard Air Line. That is the short line. We checked the tariffs and they show a physical connection between the Atlantic Coast Line and the Seaboard Air Line at Lacoochee (Rec., 216).

Exam. Waters: Are you questioning whether these rates apply over these routes?

Mr. Gwathmey: No, I question whether these rates shown on this exhibit will apply at all, because they are not the rates we are proposing, but I assume that is understood, we are not proposing the rates shown on this exhibit (Rec., 217).

Exam. Waters: Do the existing rates apply over the routes shown?

Mr. Gwathmey: Mr. Mesengill of the Seaboard Air Line, who is present, tells me they do not apply over the routes shown on the exhibit to points south of Jacksonville. We will try to show that later (Rec., 217).

Mr. Aldredge: That is the way the rates are made to Florida, mostly, it is Jacksonville combination (Rec., 217).

It is generally true that at present rates from all other shipping territory to points in the peninsula of Florida are constructed in exactly the same manner that the carriers used in constructing rates from Montgomery, that is, by

combination of factors to and beyond Jacksonville (Rec., 218).

In the Meridian Case, to which several of my exhibits refer, different rates were proposed by the carriers on different groups of these commodities. One scale was proposed and adopted and is now being applied on sand and gravel, and slag and crushed stone were given a different basis, to the best of my recollection. I examined into that closely in times past. Crushed stone and slag were among the same rates as common brick and the common brick rates have since been changed (Rec., 219).

[fol. 59] By Mr. Gwathmey:

Q. Now, in working out the scale which you have proposed, based upon the Meridian scales, isn't it true that you have taken the scale then used on low grade commodities such as sand, and used it in constructing the scale which you are now proposing on crushed rock and slag?

A. I don't want to make an affirmative answer to that question just as you have put it; we took the scale which you proposed, and which was approved and applied on gravel, which includes all kinds of gravel and sand, and used that as a basis regarding it sufficient to eliminate the odd cents and the irregularities that had crept into it, and used that on our description No. 1, which included washed gravel and slag and crushed stone, and we proposed a lower scale on sand; we modified it to that extent (Rec., 219).

By Mr. Gwathmey:

Q. The differentials or differences of the different groups which you are now proposing are shown, as I understand it, on these Sheets Nos. 20 and 21, under the captions Description No. 1 and Description No. 2?

A. Yes sir.

Q. Will you just state briefly the basis of the differentials between the commodities as shown under those respective descriptions? What is the ground of distinction in asking for a difference of rates on the commodities shown on Description No. 1, as compared with those under Description No. 2?

Mr. Cotterill: I think that comes in the realm of argument.

Exam. Waters: We think it does.

Mr. Gwathmey: It is a question of fact.

Mr. Cotterill: It will be discussed in another way and through other sources (Rec., 220).

[fol. 60] After extensive discussion by counsel, with statement by the Examiner that the Commission desired light on the question, and reference by Mr. Cotterill to a portion of the exhibit previously withdrawn from evidence, record 220-227, the witness answered:

The differentiation between the two groups of commodities is based upon differences in values, differences in competitive conditions, and differences in the ability of the commodities to stand a transportation charge and move freely. The grouping of the commodities into groups is based upon a similarity of transportation conditions, similarity of uses, and keen competitive conditions, and similarity of values (Rec., 228).

Mr. Gwathmey objected to page 28 of Exhibit 1, which is a compilation relating to the rate of return of carriers, on the ground that under the decisions of the Supreme Court, the exhibit is irrelevant (Rec., 228). He did not request a ruling on the objection and none was made.

Page 22 of Exhibit 1 was withdrawn. Portions therefrom read in evidence by the witnesses were stricken on motion of Mr. Martin (Rec., 229).

The data as to volume of movement on sheet 2 of Exhibit 1 bears on the scale that the complainants have proposed in this case. I cannot answer yes or no, without qualification, the question if the volume of sand and gravel in the south were twice as great as indicated on the exhibit would a slightly lower scale be warranted than we have proposed. Assuming that the volume of other traffic was held up to its present proportions and the transportation conditions continued as they are, I think that it would (Rec., 230).

By Mr. Mohr:

Q. Now, assuming that the same amount of tonnage on other commodities would be the rule in the future, and the tonnage of these particular commodities increased 100 per cent, what would be your answer?

A. I would still say it would probably justify a somewhat lower scale (Rec., 231).

[fol. 61] I propose this as a reasonable scale, in my judgment, and I do not base this scale entirely upon that theory. The movement of these commodities has practically doubled in southern territory in three years (Rec., 231).

It is my contention that the level of the rates has restricted the production or movement of sand and gravel (Rec., 232).

Mr. Mohr called attention to the fourth column on sheet 6 of Exhibit 1, wherein the elimination of fractions, amounts as much as 7, 11 and 12 cents, had been written off in eliminating the odd cents. The witness replied that it was necessary to regrade the scales for consistency (Rec., 233).

On sheet 18 of Exhibit 1, showing the extent of the discrimination against Montgomery in favor of Georgia points, is shown a rate of $1.08 from Montgomery to Columbus, with $1.00 from a Georgia point to Columbus. This would be from any shipping point in Georgia coming within the range of that distance. I do not know whether there is a shipping point in Georgia within that range of distance (Rec., 233).

By Mr. Mohr:

Q. Now, with respect to the proposed scale shown on sheet 20 of Exhibit 1, in applying this scale, is it the idea of the parties that propose it that it should be strictly adhered to, or if it be shown that there are special particular situations that need attention, do you think they should be dealt with on their merits? I have in mind any special situation that may arise, competitive situations for one thing.

Mr. Aldredge: I think it would be much better to adhere strictly to the scale if it is at all practicable and possible. One of the fundamental thoughts in the minds of the complainants and interveners was to propose such a scale as would make it unnecessary to depart so far from the scale as has been the practice in the past (Rec., 234).

[fol. 62] Possibly there might be instances where some deviation from the scale would be necessary, but I think a deviation ought to be considered very carefully indeed (Rec., 235).

By Commissioner Lewis:

Q. For my own enlightenment, would you apply that answer to the movements to Jacksonville, which now seem to be on a specific rate?

A. Our idea was to apply the scale to the peninsula of Florida with certain differentials superimposed upon the scale, and that would eliminate that combination based on Jacksonville, and make unnecessary the operation of the proportional rates (Rec., 235).

We want one rate straight through. We are proposing that the same principle be observed in extending rates into Florida as has been or will be observed in the Class Rate Investigation (Rec., 235).

I am here presenting in behalf of certain parties a straight distance scale. There may be some practical necessity for grouping points of origin, but that can be taken care of by using the average of the scale without deviating from the general level of the scale (Rec., 236).

It is my thought that this scale should, with that exception, be applied rigidly, regardless of who it helps or hurts. I think that is the general situation of the complainants (Rec., 236).

As I have already explained, the scale that I have here proposed is based upon the scale proposed by the carriers in 1917 for application on sand and gravel with some modifications. I have not shown in any of my exhibits the rates that were proposed by the carriers in 1917 on crushed stone and slag, but I have explained what they were and what the basis was. They were included in the same group with common brick (Rec., 237).

[fol. 63] I did not give any particular consideration in working out our proposed scale to the rates proposed by the carriers on crushed stone and slag in 1917, because those rates in my judgment are all wrong, and the carriers themselves have changed their minds about them and the common brick rates have changed and the conditions have changed generally (Rec., 237).

In differentiating between the rates in descriptions 1 and 2, and using value as one of the principal reasons, I considered that washed gravel in bulk had a range in value between 50 and 90 cents per ton (Rec., 238).

Sand and washed gravel in bulk in mixed carloads was included in the description along with washed gravel because of the manifest discrimination that would happen if you allowed a mixed carload of the higher grade and the lower grade commodity to move at the rates on the lower grade (Rec., 238).

The value we placed on sand in making the description ranged all the way from 10 to 50 cents per ton. On slag, the range in value is about the same as washed gravel. On stone, broken stone, rubble, etc., the range in value in our state is pretty well the same as the other two commodities; I understand it goes higher in some of the other states. On gravel, not washed, 15 to 50 cents a ton, clay gravel the same. I am giving you the range of values that we considered in determining these questions. We saw there was such a difference in the range in values that a differentiation was practical (Rec., 239).

It is true that a great many of the intrastate rates on these materials in the state of Alabama now in effect are actually substantially lower than the scale which the complainants are proposing would produce as applied to the mileages (Rec., 240).

Mr. Burchmore: I do not want to ask any question that might embarrass you in your official position as expert for [fol. 64] the Alabama Commission, but bearing in mind that the intrastate rates in Alabama do not seem as a whole to be involved in this case, I ask whether it is intended that complainants' proposed scale shall actually go into effect intrastate in Alabama if it takes effect in Georgia (Rec., 240).

Mr. Aldredge: I can answer that question, but I cannot find my Commission. I will say that I think undoubtedly those specific rates that you were talking about in Alabama would have to be increased when the revision is accomplished; I have had no other thought all along (Rec., 241).

Mr. Martin in questioning the witness reserved his position of protest that Mississippi intrastate rates are not at issue.

On sheet 17 of Exhibit 1, the distance from Montgomery to Jackson, Mississippi, is computed by what is supposed

to be the direct line via Selma and Meridian over the Western Railway of Alabama, Southern Railway, and Alabama & Vicksburg (Rec., 241).

From Montgomery to Vicksburg, Mississippi, the distance is figured by the same route of the same carriers. To Brookhaven, the distance was computed by the same route through Jackson, then the Illinois Central (Rec., 242).

The Mississippi road construction scales, in next to the last column on sheet 17, are single line scales. I have here compared in every instance a joint haul for a single line. We do not have any joint line scales (Rec., 242).

Mr. Cotterill: Exhibit No. 2 is designed to show a similarity of conditions in the Mississippi Valley, as compared with the conditions in the southeast generally (Rec., 243).

Mr. Aldredge: It is also designed to support the suggestion of the complainants and interveners for an uniform [fol. 65] level of rates within the scope of this investigation in the southeast (Rec., 243).

The first railroad shown on Exhibit 2 is the Illinois Central. The showing relates to the entire line of the Illinois Central, including the lines north of Memphis and west of Chicago. We have no way of separating the line between the north and the south. I wish we did (Rec., 244).

In the classification of the materials, we took into consideration all of the elements of value and competition and what the traffic would bear, etc. We did not give any greater weight to one than the other (Rec., 244).

The value given by another witness, of approximately $1.25 per ton for washed sand, would be high grade sand (Rec., 244).

That example should not control a rate level. There are doubtless little pits here and there that get a pretty high price for their product, but when they meet competition they have to reduce it. I think we ought to consider the average of the tonnage that moves and not the average price of each pit (Rec., 245).

I am not willing to amend the classification of these materials, as shown on sheet 21 of Exhibit 1 by including "asphaltic limestone, broken, crushed or ground". You, Mr. Martin, have a complaint of your own pending involving those rates (Rec., 245).

The transportation characteristics of the various commodities included in my exhibit, excluding those features which I have mentioned of value, etc., are similar. They have similar loading characteristics and similar transportation characteristics. This is with the understanding that I am eliminating in my answer those characteristics which I have mentioned, limiting it to strictly transportation characteristics (Rec., 246).

I think bituminous coal would be similar, too, but it moves on higher rates (Rec., 246).

[fol. 66] On page 2 of Exhibit 1, the average loading of these commodities shown is the actual average as taken from the statistics of the Interstate Commerce Commission on all of these commodities originating within southern territory. I know of no better source of information (Rec., 247).

The classification which is here shown of sand, gravel and stone, in the Commission's statistics, include some commodities of minor importance from a tonnage standpoint which are not involved in this case. I think it includes building stone. These other commodities will load up to the full carrying capacity of the car. There is a long list of these other commodities, but they are of minor importance from a tonnage standpoint (Rec. 247).

I am sure that if the tonnage of these other commodities was taken into consideration, it would not change the average loading very much (Rec., 248).

Turning to page 11 of Exhibit 1, the comparison made with rates from Montgomery, Alabama, to points in South Georgia, is a comparison that would exist to pretty well all points in Georgia where there are through rates pubished from Montgomery, with the exception of Atlanta and certain Atlanta and West Point Railroad stations, which are on the basis of the Georgia Commission's scale (Rec., 248).

The Montgomery rate to Atlanta is on the basis of the Georgia scale. That same situation exists with respect to washed gravel and is also true as to sand. I want to say that I do not consider that the Georgia scale is equitably graded (Rec., 249).

Mr. Brooker moved that the last part of the answer be stricken as not responsive. The objection was noted (Rec., 249).

I am connected with the Alabama Commission, but I am acting in the capacity of advocate for the complainants and interveners in this case. The Alabama Commission has intervened; I guess I am representing them (Rec., 249).

[fol. 67] The Birmingham slag interests are in the case too. I do not know whether our Commission employed Mr. Cotterill to represent them in this case; they had not when I left (Rec., 250).

I constructed this proposed scale which I propose shall apply to the territory within the scope of the investigation. The scale goes up to 1,020 miles in order to take care of the situation in the peninsula of Florida. It is for this Commission to say whether the scale proposed by me shall set aside the Georgia scale and apply intrastate in Florida (Rec., 250).

We endeavored to present to this Commission a well-rounded fully developed scale of rates and we had to comprehend the whole southern territory in order to do it (Rec., 251).

We endeavored to consider producers and consumers and the carriers all over the southern territory (Rec., 251).

There is a very large movement of sand and gravel from the Montgomery district to Atlanta. It may be true that it is the largest single movement. I know there is a large movement of sand and gravel from the Montgomery district to Atlanta and a large movement of slag from the Birmingham district, but just what proportions of the total movement they are, I do not know (Rec., 251).

The single line distance from Birmingham to Atlanta is 167 miles and from Montgomery to Atlanta it is 174 or 175 miles (Rec., 252).

I do not know what points in Georgia this washed gravel and slag competes with at Atlanta (Rec., 252).

I can give you my general information, that your rock quarries and sand pits are located principally within a very close range of Atlanta (Rec., 252).

From Montgomery the Atlantic Coast Line, Seaboard [fol. 68] Air Line and Central of Georgia Railway extend right across through the heart of the State of Georgia on single line movements. From Birmingham, the Central of Georgia, the Southern Railway, and the Atlanta, Birmingham & Atlantic extend across the State of Georgia, with single line movements (Rec., 252).

These carriers serve the Atlanta district, as well as the South Georgia district, which I have referred to, on a single line basis (Rec., 252).

I do not know of any rock quarries in Georgia that compete with this gravel and slag which can reach this South Georgia territory on a single line scale within 160 miles. But we extended the joint line differential a little further than in the Georgia scale (Rec., 253).

I do not know where is Ladds, Georgia. If it is on the Seaboard Air Line Railway three or four miles from Cartersville, it would have to move over two or more lines going south in Georgia. I will accept your statement that it is approximately 51 miles joint line from Ladds to Atlanta, through Cartersville and approximately 68 miles via the continuous line through Rockmart on the Seaboard (Rec., 254).

Mr. Price: I just want to know what consideration was given to the Georgia scale, as compared with the Alabama situation (Rec., 254).

Mr. Aldredge: I don't see, and my Commission doesn't believe, and these complainants and intervenors don't believe, that any mileage scale of rates constructed for general application in southern territory should be warped or twisted in any way to take care of any present situation (Rec., 254) in Georgia or any other state, even in Alabama. It is wholly wrong to construct a mileage scale in that manner. When you twist it to take care of a certain situation, you are creating more situations. If you have special situations, they ought to be taken care of by special treatment. We tried to construct the scale on a reasonable and consistent gradation, and we have shown how the gradation is brought about (Rec., 255).

[fol. 69] Personally, I have never been in favor of one scale of rates for single and joint line application. I don't even favor it in class rates. But it can work much better in class rates than it can in these lower grade commodity rates. I think some recognition should be given to the greater cost of joint line service on an average than single line service, for some reasonable distance, depending largely upon commercial considerations and transportation considerations (Rec., 255).

By Mr. Price:

Q. Now, considering the movement of crushed rock, Mr. Aldredge, there is a quarry at Sparta, on the Georgia Railroad about 55 miles east of Macon, and there are quarries on the Georgia Railroad between Atlanta and Augusta, around the Stone Mountain district, and there are quarries on the Seaboard Air Line between Atlanta and Elberton, the South Carolina State Line; now, to reach this South Georgia territory, do you know of any lines or any way that this material can reach there except under joint line movement? (Rec., 256).

A. No, sir, I do not, but I think that is a natural disability, and I don't know those who have a natural advantage should yield to the demands of those who have the natural disadvantages, that is just something that is unavoidable and nobody can help (Rec., 256).

Q. Then, wouldn't it follow that this extended joint line differential would add to that natural disability in favor of the Birmingham and Montgomery districts? (Rec., 256.)

A. I don't think so. We have constructed this scale just as fairly as we know how to construct one. Now, if you will let me show you something here, I think I can illustrate my answer (Rec., 256).

I have reference to the graph. Your quarries and sand pits are located, according to my understanding, certainly a large part of them, within 60 miles of Atlanta.

[fol. 70] This Georgia scale begins at a very low level and holds that until it gets at about 75 miles, and then takes a perceptible bend upward, a perceptible hump until it goes back within a reasonable gradation at about 375 to 400 miles. Within that hump, it touches the movement of slag and sand and gravel from Alabama producing points into Atlanta and the Georgia markets. The scale that we worked out was constructed to eliminate all the humps (Rec., 257).

The Georgia Commission's scale begins at a low level, 50 cents a ton. Ours begins at 45 and at 35 cents on sand, but it steps up (Rec., 258).

I am not familiar with the sand pits in the Lumber City district in Georgia. I am familiar with the sand pits on the [illegible], B. & A. Railway, which are more than 100 miles from Atlanta, but they use Birmingham as their principal market (Rec., 258).

By Mr. Price:

Q. The gentleman from Junction City said he used Atlanta. Now, Mr. Aldredge, in the beginning of the proceeding, there was some mention made of some kind of a conference in Washington last week between Mr. Caskie and Mr. Cotterill and Commissioner Lewis; were you or Commissioner Patterson present at that conference? (Rec., 258.)

A. I was not, I don't know whether——

Q. Do you know whether Commissioner Patterson was or not?

A. No sir, I don't know.

Q. Do you know whether this case was discussed at that conference or not?

A. No sir, I don't know anything about it.

Q. Do you know who invited the conference?

A. No sir, I don't know a thing about it (Rec., 259).

The proposed scale which I have presented is thought to be a reasonable scale for application throughout southern territory. In the construction of it, we gave consideration to the rates on these commodities in the Carolinas and [fol. 71] over in the Mississippi Valley, too. The 1917 and 1918 scale, as my exhibits plainly show, was proposed for uniform application in Alabama, Georgia, North and South Carolina, by the Southern Railway and those other railroads parties to it. They propose the same level (Rec., 259).

We have prescribed a great many scales in Alabama on different commodities. I do not think we have prescribed a minimum scale. I do not recall any Alabama shipper requesting the Alabama Commission to prescribe a minimum scale, but they have asked us to remove discrimination many times by prescribing absolute rates, and we have prescribed absolute rates (Rec., 260).

Commissioner Lewis: It is just possible in the light of the questions asked by Mr. Price, that misunderstandings may arise as to this conference called by Commissioner Lewis to which he has made reference, and I desire for the record to show that I did call into my office Mr. Thurtell, who had brought the Thirteenth Section case, Mr. Caskie and Mr. Cotterill, who happened to be in the city, and who were the representatives in the next complaint cases, and

took up with them the question of whether we could not shorten, or whether we could shorten the procedure here, and Mr. Gwathmey, when we found Mr. Thurtell would not be here, was called in, and I again presented the questions to him. There was at no time any discussion of the merits of these matters that were to be laid before us. I had a letter from Mr. Price, and I wrote to Mr. Price, asking him if I could see him here on Sunday, and I intended to take up with Mr. Price exactly the same proposition. Mr. Patterson was never brought into this conference, and so far as the State Commissions or any parties are concerned, they were never in mind, it was simply a matter of seeing whether we could not shorten the procedure here, with the result that Mr. Waters and I formulated the questions which were laid before you when we met here on Monday morning (Rec., 261).

[fol. 72] Mr. Burchmore: I called at the Commission last week to inquire about the procedure and was informed of the conference in question. I am quite sure it was the wish of the Commission that all parties to this controversy would be consulted about the procedure (Rec., 262).

Mr. Brooker: I had a two or three hours' conference with you on Sunday evening about this proposed plan (Rec., 262).

Mr. Price: I want to thank you, Mr. Commissioner, for the statement that has been made in the record. We were just a little concerned because Georgia's interest here we think is the most vital of any in this whole proceeding, and some mention was made of these conferences in the beginning, and naturally our Commission wondered why, with all others concerned except Georgia, who was most vitally concerned, we had not been invited to those conferences (Rec., 263).

Witness excused.

[fol. 73] A. J. Rhea was recalled for cross-examination, and testified further as follows:

Exhibit 3 is in error in showing August 1, 1925, as the effective date of the rates. The mileage scale went into effect on April 1, 1925, and my best recollection is that it applied only where it involved reductions and the rates which were on a lower basis were not increased to the mile-

age scale until the interstate revision was made on August 1st (Rec., 264).

On Exhibit 5, the three columns headed 19, 20 and 21, all show municipal rates on these materials in Florida. The rates shown thereon under the caption "crushed stone" are the intrastate rates in Florida on commercial shipments as distinguished from stone shipped for municipal or state purposes. The only commodity covered by Exhibit 7 is slag, and the shipments on this exhibit are shipments from Ensley, and Alabama City, to all destinations in southern territory, not merely those involved in this case (Rec., 266).

The same thing is not true of Exhibit 27. That exhibit does not include one or two cars to Shreveport, Louisiana, and all traffic south of the line of the Seaboard Air Line from Jacksonville to River Junction. It embraces all shipments to all points in the southeast of the Mississippi River other than the Florida peninsula (Rec., 266).

If, as the result of this case, there is a uniformity of rates as between slag and sand and gravel, thereby eliminating such advances as slag may have by reason of any present differences in rates, I do not think it would serve to decrease the movement of slag, because there are numerous points to which we haven't rates on slag at this time. We have been trying to get them over the Louisville & Nashville (Rec., 267).

[fol. 74] I don't admit that our rates on slag generally are lower than on the other commodities. The extent to which the rates are lower would have an influence on the movement to particular destinations where we haven't rates that will move slag and our competitors have (Rec., 268).

Mr. Mohr moved with respect to Exhibit 26, that all of the data contained therein, showing the amount of increases that would result if the scale were applied to intrastate shipments in Alabama, be stricken from the record on the ground that the Alabama intrastate rates are not in issue.

After discussion of counsel, the Examiner ruled that the exhibit be admitted for what it is worth, subject to the objection (Rec., 270).

Mr. Mohr also moved that Exhibit 27 be stricken from the record for the same reason. It involves a great many shipments between points that will not be affected by an

decision in this proceeding. The objection was noted (Rec., 271).

Mr. Ribe: I want to elaborate on a previous answer in one respect: We are supporting the complainants in this case with the idea that it will ultimately result in one uniform system of rates over the south. Should the Commission find the rates from Montgomery to points in Florida unreasonable, we have no standing in court, and if the carriers do not follow with a proposal of a uniform revision from the south into Florida, we expect to file a formal complaint attacking our rates to Florida under section 1 (Rec., 271).

The majority of the points on my exhibit 9, under "gravel" are gravel shipping points. There seem to be 19 points named. Mr. Ireland referred yesterday to 6 points outside of Mississippi. I think he was counting the Montgomery district as one point (Rec., 271).

Gravel, either washed or unwashed, is shipped from the majority of the points shown. I cannot say from which points washed gravel moves (Rec., 272).

I have not filed any complaint here attacking the rate on slag (Rec., 272).

[fol. 75] Referring to Exhibit 27, my company, on shipments from Birmingham, paid a total revenue of approximately $280,000 for the period in question. If the rates which I have proposed here were adopted they will reduce that revenue to the extent of $23,633.47 for seven months (Rec., 272).

Exhibits 26 and 27 cover the same tonnage, shipped from Alabama City and Ensley, and No. 27 is a recapitulation of No. 26 (Rec., 272).

My company is located at Arrowhead, named on Exhibit 9, and ships practically no washed gravel to Birmingham. Washed gravel is shipped from Montgomery to Birmingham; I do not know to what extent, except that I recall a shipment two or three years ago to a high school job (Rec., 273).

There is a large movement of coal from Birmingham and slag moves from Birmingham in the same direction (Rec., 273).

On Exhibit 10, the rate from Gaillard, Georgia, to Atlanta is shown as 57 cents prior to August 1, 1925, and the proposed rate is shown as 80 cents. That rate was in-

creased effective August 1, 1925, to 90 cents (Rec., 274).

Exhibit 26 was prepared on the basis of the short-line distance, disregarding actual routes of shipment. It was not intended to show the route of the movement (Rec., 275).

The intrastate rates in Mississippi shown on Exhibit 4 are single line rates. I have not shown the joint line rates in Mississippi and do not know what the basis of joint line rates is (Rec., 275).

The direct routes from Montgomery into Mississippi, with the exception of the Louisville & Nashville, would be joint line hauls (Rec., 275).

Mr. Aldredge had a number of scales in his exhibits. The scale we are supporting is shown in my Exhibit No. 7 and is intended to be the same as Mr. Aldredge's proposed scale (Rec., 275).

[fol. 76] I also subscribe to Mr. Aldredge's proposed classification of these materials. Our own view is that there are no differences in the transportation characteristics that would warrant different rates (Rec., 276).

We subscribe to the different descriptions in the complainants' proposal, but base them on other than transportation conditions (Rec., 276).

Mr. Cotterill: Unless it be thought that the other enumerated reasons can be considered as transportation reasons (Rec., 276).

There are no other reasons, so far as we are concerned, for subscribing to the classification set forth by Mr. Aldredge, except an effort on the part of the Alabama interests to get together and iron out our differences, and after fighting among ourselves for years, we agree to what has been proposed (Rec., 277).

I included on Exhibit 9 all of the stone shipping points of which I have personal knowledge of a movement into Birmingham district. I did not know that there was a movement from Margerum and Colrock, Alabama (Rec., 277).

None of my exhibits are intended to cover all of the rates on all of the commodities from and to all of the points (Rec., 277).

I have no knowledge of a production of asphaltic limestone at Colrock or Margerum, Alabama, and do not know anything about the movement (Rec., 278).

In deciding that there should be a difference between the rates applied to these various materials, the principal element we gave consideration to was that there is no competition between sand and the other commodities. We were willing to relinquish our position that sand should go on the same basis as clay gravel for short distances and we would concede that that commodity should be included with sand, although in making the concession, it was contrary to our own view. We agreed as a concession in the efforts to get together with Alabama interests (Rec., 278).

Not all of the Alabama stone interests were parties to [fol. 77] this getting together. The interests represented by Mr. Martin in northern Alabama did not concur in these proposals (Rec., 279).

Referring to the stations on Exhibit 8, beginning with Spruce Pine, Alabama, on page 1, and including the Southern Railway points ending with Haleyville on page 2, based on my general knowledge of the Birmingham district, the preponderance of the movement is from the first group of points which is why I showed the sand in two groups. If there is any movement at all from these Southern Railway points, it is insignificant (Rec., 279).

Under the complainants' proposal of a strict mileage scale, I think there would be a change in the flow of the traffic in some cases, that the carriers would earn different revenues to the extent that the shipments would move from nearby points instead of far removed points would be more true as to commodities other than slag (Rec., 280).

The rates shown on Exhibit No. 3 as rates prior to August 1, 1925, were the rates that were in effect prior to April 1, 1925, when they applied both intrastate and interstate, but I believe they were the outgrowth of rates made by the Georgia Commission (Rec., 280).

The carriers in their tariffs eliminated class P and put in a line of commodity rates due to the specific advance and this is the modern equivalent of Class P. I found this as a commodity rate in our Georgia local tariff (Rec., 280).

Q. Now, with what points in Georgia do you meet competition on your slag business, and where is the discrimination due to the Georgia rates?

Mr. Cotterill: I don't believe there was any complaint as to discrimination against slag from Birmingham in favor of any rates in Georgia.

Mr. Price: His exhibit refers to Docket No. 17517, which I understand is a Thirteenth Section Case (Rec., 281).

Mr. Cotterill: I had overlooked that there was a separate intervention on the Thirteenth Section A Case brought by the carriers, that is all right (Rec., 281).

[fol. 78] Mr. Ribe: Our rates with the exception of the large points in Georgia are based on the scale that the carriers now have as their proposed scale before your Commission and the Alabama Commission, and as you know that scale is materially higher for numerous distances than the scale that you prescribed for application on the commodities with which slag competes (Rec., 281).

I do not know whether this covers the preponderance of our movement into Georgia. Atlanta is the heaviest individual consuming point, but I think the State of Georgia as a whole will take a good deal more than Atlanta individually (Rec., 282).

We are concurring in the scale of proposed rates shown on Exhibit 3, in the hope that it will be adopted for general application throughout southern territory including intrastate in the State of Georgia (Rec., 282).

Our principal objection to the present Georgia scale is that the gradation jumps, particularly I notice in one spot that it seems to jump from about 80 miles to 110 or 115 miles without a change in rate. That has the effect of including important Georgia sand shipping points in a group that otherwise would not occur if the scale had the proper gradation. I refer to points in the Fort Valley district which I believe range from eighty-some odd miles, Gaillard for instance, is 94 miles, Lumber City is 104 miles. I can best explain that by looking at Mr. Aldredge's map (Rec., 283).

That is the only objection I have found to the Georgia scale, outside of the level of it. We think the gradation part and the increase in our proposed scale is better than the one the Georgia Commission fixed (Rec., 283).

Using Junction City, which was referred to this morning, it is a fact that there is a considerable movement of sand in Georgia for a good deal longer distance than 105 miles. I think our scale would reduce the revenue that Lumber City has to pay over the shorter distant points [fol. 79] under the Georgia scale. Our scale would reduce the differential that Lumber City has to pay over the Fort

Valley district, in comparison with the Georgia Commission's scale. It will also reduce the differential between the Montgomery district and the Fort Valley district to Atlanta. But I said it would reduce the differential as between Lumber City and Atlanta and points located from 90 to 110 miles of Atlanta. Lumber City is approximately the Montgomery distance from Atlanta (Rec., 284).

I can't say whether I would have found any objection to the Georgia scale if the rate had been made 5.5 cents for 110 miles by the Georgia Commission. That was the principal objection I found to the Georgia scale, but I said that we preferred our own scale because we thought the gradation was better (Rec., 284).

I supported the Georgia scale in the proceedings before the Alabama Commission (Rec., 284).

By Mr. Burchmore:

Q. Do you believe that the total intrastate movement of sand and gravel in any representative week would be as low as one or two cars in the State of South Carolina, or one or two cars in the State of Virginia, or ten or fifteen cars in the State of Tennessee, as little as that?

A. Mr. Burchmore, I think you overlooked the fact that these exhibits do not include the hauls under 80 miles or more than 200 (Rec., 285).

Q. Well, I am not overlooking anything; I am asking you that question.

A. Well, these exhibits only include the shipments moving within distances of 80 to 200 miles, and I think that Exhibit No. 18 could be agreed as based on the carriers' figures (Rec., 285).

Q. Wait a minute, I didn't ask you about that. Just look at Exhibit No. 19, and read the words, it says: "Such analysis being made for the purpose of showing the extent of the intrastate movement exclusive of the intrastate movements to Atlanta, Birmingham, Memphis and New Orleans;" then it enumerates the states, so I am asking [fol. 80] you, since you directed my attention to that exhibit, do you believe that in any representative period there is that small a number of tons moving distances less than 200 miles in these states? (Rec., 285.)

A. No sir (Rec., 285).

In answering this question, I took account of the movements under 80 miles as well, from nothing to 200 miles. If that range of distance be regarded, the movement of 15 cars would not be typical (Rec., 286).

The carriers' exhibit, from which Exhibit 19 was taken, did not segregate sand from gravel (Rec., 286).

There is no limitation as to mileage on Exhibit No. 19, but the information contained in No. 19 is the same as shown in No. 16 and covers the same carrier exhibit. I was mistaken in thinking that was on the exhibit itself (Rec., 286).

I think that it is possible there were only 1 or 2 cars moved intrastate for distances between 80, as a minimum, and 200 miles, as a maximum in the states of South Carolina and Virginia, or only 15 cars for such distances in the State of Tennessee in a representative week. In some states, I imagine the movements are relatively short. I do not know what the condition would be in Tennessee. That exhibit was presented by the carriers as covering a representative week and I took it for what it was worth and used it (Rec., 287).

Exhibit 19 should be taken as covering data for movements over 80 and under 200 miles, although the exhibit on its face does not say so (Rec., 288).

Q. Mr. Ribe, you have pointed out what to you seems to be a serious if not fatal criticism to the progression of the Georgia Commission's scale in a certain respect; do you wish it to be understood that that particular defense as you view it is one which is susceptible of correction without having a consequence in other mileage blocks, or would the effort to straighten out a kink of that character necessitate a change in the balance of the scale? (Rec., 288.)

[fol. 81] A. I think the change in the balance of the scale would follow necessarily (Rec., 288).

Q. Mr. Ribe, do you care to comment upon the so-called recent conference in Birmingham, in which you have become involved by certain other questions, at least so far as to explain the circumstances under which Mr. Martin came to be there and why it was that he was out of step with the rest of the parade? (Rec., 288.)

A. I don't know why Mr. Martin happened to be there; my own opinion as to why he was out of step with the

balance of the parade, as far as I am personally concerned, is that we haven't yet reached the conclusion that we should concur in the same rates on asphalt rock that he has been advocating (Rec., 289).

Mr. Cotterill: Notice was promulgated by the Alabama Commission after it had concluded that it was its duty under its own statute to participate in this proceeding, and in order that it might be informed as to facts and circumstances that would enable it to conclude as to the proper course which it should pursue, two members of the Commission and its special Examiner, Mr. Aldredge, went to Birmingham for the purpose of meeting the interests in Alabama which were understood to be in intefest in the case. Among the notices sent out was one to a certain Chamber of Commerce in Alabama (Rec., 289).

At any rate, the argument was simply for private consultation between the Alabama Commission and those in interest in those proceedings, so far as the Alabama Commission understood them. Mr. Martin participated through some connection which it turned out that he had with the Florence Chamber of Commerce, and participated in it in behalf of or as a part of the group intended to be assembled at the conference, but as an avowed representative of stone producers, or another commodity which so far as the complainants believe and understand are not even involved in [fol. 82] the case. Finding Mr. Martin there, it was only natural that courtesy should suggest that he be permitted to remain. Nothing occurred in the conference other than that which will usually occur when parties either having common interests or similar interests discuss the matters coming before them; that was its only significance. Mr. Martin was frank enough to disclose after he got in the conference that he would also represent the Mississippi interests which were clearly in direct opposition to those of the parties who were invited to the conference (Rec., 290).

Mr. Martin: I offered to withdraw in order that they might discuss other matters more freely in my absence, but they invited me to stay (Rec., 291).

I appeared before the Georgia Commission on November 26, 1923, at the time the scale was submitted by the Commission to the shippers and carriers for criticism and I

approved the Georgia scale. I approved it as late as a hearing referred to by Mr. Brooker before the Alabama Commission. Since then we have changed our minds about it. We had not discovered the kink up to that time (Rec., 291).

On Exhibit 3, the present rates in Georgia are shown in the last two columns (Rec., 292).

It was the general claim that there was no movement under the Class P scale in effect prior to August 1, 1925, which is shown on Exhibit 3, but I do not know that of my own knowledge (Rec., 292).

[fol. 83] J. L. GRIFFITH, recalled for cross-examination, testified further as follows:

The furthest distance we ship sand, from Chattanooga, in considerable volume, is approximately 75 miles. Gravel goes a little further than that, something like 140 or 150 miles. The greater volume of the gravel does not move beyond 150 miles. I would not name specific points. I recall a considerable movement to Rock Island, Tennessee, and Atlanta, Georgia (Rec., 294).

If the proposed scale that we are advocating is adopted, we would expect to ship to any point that the market would offer where the rate would be sufficient to permit us to participate in the business. I have no particular points in mind. It is just as likely to be one point as another. In highway construction you never can tell (Rec., 294).

The rates shown in the first column on Exhibit 28 apply between all points on the Atlanta division of the N., C. & St. L. Railway between Chattanooga and Atlanta, in Georgia, with the exception of Dalton and Atlanta. The rates shown in columns 7, 8, 9, and 10, on the exhibit, apply from any production point in Georgia to points within the State of Georgia, over what we term Class A roads. It is our position that any producing point on any lines over which these scales apply are competing points with Chattanooga (Rec., 295).

Exhibit 33 in the main may be considered as just a comparative rate statement (Rec., 295).

Scales 13 and 14 on Exhibit No. 28 apply over the Knoxville division of the Southern Railway between Chattanooga and Knoxville. We ship sand and gravel up that line in any considerable volume for approximately 75 miles, which would reach in the vicinity of Loudon (Rec., 296).

Exhibit No. 32 covers the C. N. O. & T. P. Railway. We ship on that road as far as the Kentucky state line. We have shipped up past Oakdale. There is a sand and gravel plant at Oakdale (Rec., 296).

I do not recall having shipped any sand to Atlanta, either [fol. 84] before or since the revision of August 1, 1925.

By Mr. Brooker:

Q. In other words, does your company intend or expect to have Atlanta as a sand market in the future? (Rec., 297.)

A. I don't think it is entirely beyond the realms of possibility of having it for a sand market (Rec., 297).

Q. Isn't it true that under the rates that went into effect August 1, 1925, your rate situation from Chattanooga as compared with Gaillard, Georgia, to Atlanta, is a great deal better than it was prior to that time? (Rec., 297.)

A. I couldn't answer that without making a comparison in the rates prior to that time, I don't recall what they were (Rec., 297).

Q. Well, if I should tell you that the differential that you paid over Gaillard to Atlanta prior to August 1st was 45 cents, and at the present time it is 20 cents per ton, and that as compared to Montgomery, instead of having 25 cents a ton higher than Montgomery from Chattanooga to Atlanta, you are now 10 cents below Montgomery to Atlanta, don't you think the Georgia scale has helped you out to that extent? (Rec., 297.)

A. It doesn't help out unless it is sufficiently low to move the business (Rec., 297).

Taking your statement as true, as a matter of comparison, our position would be more favorable in Atlanta, but still the rate is too high to move the business.

(Witness excused.)

[fol. 85] R. J. Doss testified as follows:

I am assistant general freight agent of the Atlantic Coast Line, headquarters Wilmington, North Carolina (Rec., 306).

I have been connected with the Southern railroads in some capacity or another for approximately twenty-six years. My testimony will deal with the rates on chert, clay, sand, gravel, crushed stone, slag, etc., within the state of Georgia, covered by I. C. C. Docket No. 17517 (Rec., 307).

I will undertake to show that the intrastate mileage scales established between points in Georgia by the Georgia Public Service Commission, in its order of February 25, 1925, which rates became the maximum rates in Georgia, effective April 1, 1925, are unreasonably low; that they discriminate against interstate shippers of these commodities to, from and through Georgia; that their establishment has already caused financial loss to the Atlantic Coast Line Railroad, and that, if continued in effect, they will no doubt spread to interstate shipments and thereby cause additional and serious loss to this railroad (Rec., 307).

I will also undertake to justify uniform application of the joint and single line scales, reduced [illegible] per cent as of July 1, 1922, which the Georgia trunk line carriers, in 1921, submitted to the Georgia and Alabama Commissions. These scales are already very generally applied throughout the south, particularly by the Atlantic Coast Line Railroad on interstate traffic. It should be understood, however, that the application of these scales has not been, and is not now being, proposed to, from or between points in Florida south of the line of the Seaboard Air Line Railway from Jacksonville to River Junction, Florida; the carriers' proposed mileage scales are to be applied only between points in the south on and north of the Seaboard Air Line Railway from Jacksonville to River Junction. Unless specified to the contrary, my testimony should not be considered as dealing [fol. 86] with the rates to, from or between points in Florida south of the line which I have just mentioned (Rec., 308).

It should be understood that by the carriers' proposed mileage scales, I have reference to the mileage scales which the carriers, in 1921, submitted to the Georgia and Alabama

Commissions, which scales were reduced 10 per cent as of July 1, 1923, in compliance with I. C. C. Docket No. 13293; unless otherwise specified, I will refer only to the scales submitted for application locally or jointly between points on so-called trunk lines. By the Georgia Public Service Commission's mileage scales or order, I have reference to the order of the Georgia Public Service Commission, dated February 25, 1925, its Dockets Nos. 15416 and 15997 (Rec., 308).

The total movement of stone, sand, and like articles, via Atlantic Coast Line Railroad was, during 1922, 1,825,702 tons, which was 11.1 per cent of its total tonnage handled for that year; in 1923 it handled 3,047,292 tons, which was 15.2 per cent of the total tonnage handled; in 1924 it handled 3,750,195 tons, which was 18.1 per cent of the total tonnage handled. The figures for the year 1925 are not yet available, but for the first ten months ended October 31, 1925, the Atlantic Coast Line Railroad handled 4,452,519 tons, which was 22 per cent of the total tonnage handled during those ten months; the total revenue accruing on this 1925 tonnage was $4,074,316.02, or an average rate of 91.5 cents per ton. During the ten months period mentioned, the Atlantic Coast Line Railroad handled more tonnage of stone, sand, and the like, than of any other one commodity. The tonnage of stone, sand, and the like, exceeded by more than 1,300,000 tons the tonnage of the next ranking commodity; the revenue on stone, sand and the like, ranked fifth in the list (Rec., 309).

From the standpoint of both tonnage and revenue, this [fol. 87] traffic is of very great importance to the Atlantic Coast Line Railroad (Rec., 309).

Only one other railroad, the Southern Railway System, handles more of this traffic than the Atlantic Coast Line (Rec., 310).

In this movement of stone, sand, and the like, between points on the Atlantic Coast Line Railroad, there is practically no utilization of empty equipment moving in the direction of this tonnage. In handling sand and gravel from the Richmond and Petersburg districts to points west of Richmond, Petersburg and Jarratt, on the Chesapeake & Ohio Railway, Norfolk & Western Railway, and the Virginian Railway, empty coal equipment returning to the

mines can be utilized; because of this advantageous operating condition, the rates applicable on sand and gravel to these points have been made lower than they would have otherwise. On sand and gravel moving from North Carolina and South Carolina origins, eastward or northward, there is at times opportunity to utilize empty coal equipment returning to the Virginia, West Virginia and Eastern Kentucky mines. But the large and important movement of stone from Columbia, South Carolina, sand and gravel from North Carolina, South Carolina, Georgia and Alabama producing points, and of slag from the Birmingham district and Copperhill, Tennessee, to the territory served by the Atlantic Coast Line Railroad in South Carolina, Georgia, Alabama, and Florida, is in the direction of the loaded movement of gondola, coal and other open top equipment. There is practically no opportunity to utilize this equipment when moving in the direction opposite to the loaded movement. As a matter of fact, we are not able to furnish return loading for but little of the equipment which reaches us loaded with coal and such commodities, and which is made empty on our line or on the lines of our short line connections. Our Superintendent of Car Service has advised me that the empty movement of gondolas on the lines of the Atlantic Coast Line Railroad is substantially the same as the loaded movement. Gondolas are used almost [fol. 38] exclusively in the movement of sand, gravel, stone, slag, etc. The records indicate that for practically every mile we haul a loaded gondola car, we have to perform a corresponding haul on an empty gondola (Rec., 310-311).

A series of exhibits for the purposes of this case were prepared by me or under my direction (Rec., 311).

My Exhibit 34 is a statement showing the rates on sand, gravel, crushed stone, slag, etc., submitted by the Georgia trunk and short line carriers to the Georgia Commission in 1921, for single and joint line hauls, compared with the rates on these commodities prescribed by the Georgia Public Service Commission in its order of February 25, 1925 (Rec., 312).

Exhibit 34 was received in evidence (Rec., 312).

My Exhibit 35 compares the mileage scales in effect on these commodities between points on the Atlantic Coast

Line Railroad in Georgia prior to April 1, 1925; the single line scale proposed by the Georgia trunk line carriers; and the rates prescribed, effective April 1, 1925, by the Georgia Public Service Commission (Rec., 313).

Exhibit 35 was received in evidence (Rec., 313).

The mileage scales shown as in effect on the Atlantic Coast Line Railroad prior to April 1, 1925, are the same as those then in effect locally between points on other lines in Georgia. The exhibit does not show distances beyond 300 miles, for the reason that there are no hauls on the Atlantic Coast Line Railroad in excess of this distance (Rec., 313).

Prior to April 1, 1925, there were no joint line mileage scales applicable on these commodities between points in Georgia; in the absence of specific through rates, lowest combination applied observing 90 per cent of the maximum local rates in effect on June 25, 1918, plus 20 cents per ton, plus the 25 per cent increase under Ex Parte No. 74, less 10 per cent as of July 1, 1922, under I. C. C. Docket No. 13293 (Rec., 313).

[fol. 89] My Exhibit No. 36 is a chronological statement of rates on sand and gravel, carloads, between points in Georgia on the Atlantic Coast Line Railroad, and its predecessors, from 1885 down to date (Rec., 313).

Exhibit 36 was received in evidence (Rec., 314).

My Exhibit 37 is a similar statement showing the rates on crushed stone, applicable between points in Georgia on Atlantic Coast Line Railroad, and its predecessors, in effect in 1885, and, in chronological order, the subsequent changes therein (Rec., 314).

Exhibit 37 was received in evidence (Rec., 314).

Prior to April 1, 1925, the rates were published in dollars and cents per car, but for the purpose of these exhibits, they have been converted to per ton basis (Rec., 314).

It will be observed that from 1885 to 1890 there was a steady decline in the rates. The rates established effective December 1, 1890, as result of Circular No. 178 of the Railroad Commission of Georgia, remained in effect without change until, effective April 1, 1915, when they were slightly

increased by the authority of the Railroad Commission of Georgia's Circular No. 391. I have reproduced the Georgia Commission's report and order which preceded the issuance of its Circular No. 391, and I desire to file same as my Exhibit No. 38 (Rec., 314).

Exhibit 38 was received in evidence (Rec., 314).

On Exhibit 34, where I show the caption submitted by carriers to the Railroad Commission of Georgia, this column shows the rates that the carriers are now proposing, being the scale which they submitted to the Georgia Commission in 1921, less 10 per cent. I am dealing now with a history of the intrastate rates in Georgia (Rec., 315).

In undertaking to revise the rates to, from and between points in the south, in compliance with the Interstate Commerce Commission's Fourth Section Order No. 3866, of April 13, 1914, the carriers found it necessary to petition [fol. 90] the state commissions for a general revision in the intrastate rates in the several southern states except Florida. Petition of the Georgia carriers, addressed to the Georgia Commission, was filed in the early part of 1916 (Rec., 315).

In the carriers' original petition they suggested that the then existing rates on sand, gravel and crushed stone be continued. The then current rates were those which had only shortly theretofore been established under the Georgia Commission's Circular No. 391, effective April 1, 1915, and to which I have just referred (Rec., 315).

At the hearing of the carriers' petition during the latter part of 1916, the original petition was amended and a revised mileage scale for application on sand and gravel was suggested. This revised scale was lower than the mileage rates than in effect. Later, substantially the same mileage scales were submitted to the Alabama Commission (Rec., 316).

My Exhibit No. 39, shows under Column "A" the rates submitted to the Georgia and Alabama Commissions in 1916; also the rates tentatively approved by the Georgia Commission in 1917 (Rec., 316).

Exhibit 39 was received in evidence (Rec., 316).

These figures have been subjected to the general rate changes which have since occurred, and, in Column "B" of

the exhibit, are shown as they would be today. The exhibit also shows in Column "C" the rates approved for the Alabama Great Southern Railroad in the Meridian Case, I. C. C. Docket No. 9560; it shows in the Column "B" the rates, less 10 per cent, proposed by the carriers in 1921; and in Column "E" the rates recently prescribed by the Georgia Public Service Commission. (Rec., 316).

It will be observed that the so-called Meridian scale is substantially the rate suggested by the carriers in 1916. On sand, the rates are lower than those which the carriers are now suggesting, while on crushed stone and slag the [fol. 91] rates formerly suggested by the carriers are higher than those now suggested (Rec., 316).

Had the Georgia carriers, in 1916, followed their original plan of not suggesting any change in the rates on sand and gravel, which, as I have previously explained, were established by the Georgia Commission, effective April 1, 1915, and had the Georgia Commission decided to continue its scale of maximum rates, the mileage scale in effect on sand and gravel between points in Georgia today would, but for the Commission's order of February 25, 1925, be substantially the same as the single line scale which the carriers are now suggesting (Rec., 317).

The order of February 25, 1925, is the order concerning which the carriers are complaining in their thirteenth section petition (Rec., 317).

Mr. Gwathmey: The petition in the Thirteenth Section Case was filed originally by the Atlantic Coast Line Railroad and on behalf of certain short line railroads, but by a supplemental order issued as I recall in January of this year, the Commission broadened the scope of the proceedings to include all railroads in Georgia. My understanding is that the carriers are all in accord on that point. I represent only certain carriers for whom I entered an appearance (Rec., 318).

Mr. Mohr, Mr. Walker and Mr. Pope concurred in the statement for the carriers they represent (Rec., 319).

The Witness: In submitting the proposed reductions in the mileage scales, contemplated under their 1916 proposal, the carriers were influenced by the extremely low special commodity rates then in effect between certain points in Geor-

[fol. 92] gia. There had, previous to that time, been considerable litigation regarding these low special commodity rates. The carriers at that time were anxious that a uniform mileage scale be applied throughout the state, and they decided that, instead of asking that all of the low special rates be brought up to the then existing scale, some compensating reduction should be made in the scale. Further, it was the idea of the carriers at the time that varying rates could be carried on sand and gravel, on the one hand, and crushed stone and slag, on the other hand (Rec., 320).

When the proposed reduced scale on sand and gravel was submitted to the Georgia Commission by the carriers in 1916, they did not anticipate that that scale would be observed as the maximum in revising interstate rates, or that, necessarily, it would be the basis for the maximum rates in the other southern states. The scale proposed to the Georgia Commission at the time was, however, to be observed as the minimum in revising interstate rates (Rec., 320).

The rates shown in Column D on Exhibit No. 39 are those which the carriers submitted, the trunk line carriers submitted in 1921 to the Georgia and Alabama Commissions, reduced 10 per cent, and is the mileage scale which they are now proposing to apply generally throughout the south, as I have just described (Rec., 321).

It is a reduction on slag and stone, but it represents for most of the distances an increase on sand and gravel (Rec., 321).

Page 2 of Exhibit 39, where it reads "sand and gravel", it should be "gravel other than washed gravel"; washed gravel takes the same rates as crushed stone shown on page 3 of the exhibit (Rec., 322).

I represented the Atlantic Coast Line Railroad in the conferences at which the 1921 scale was arranged and I had the authority to act for the Atlantic Coast Line Railroad. It was a committee who sat down and reviewed all [fol. 93] of the facts in connection with the 1916 and 1917 handling, and also the handling of the general question through the period of Federal control, and who were authorized to submit to the Georgia Commission in response to its request a new basis for rates on sand, gravel and other commodities (Rec., 323).

We discussed most everything you could imagine about the rates. I think each of the representatives of the carriers disclosed in the conference and in my presence the considerations which prompted them to a conclusion or course, and I am reasonably satisfied that I recall the conclusions which each carrier had concerning the reasons for them. I have also voluminous records of the various proceedings (Rec., 324).

During the period of Federal control the Southern Freight Traffic Committee of the United States Railroad Administration, located at Atlanta, gave considerable thought to the question of uniform mileage scales on sand, gravel, crushed stone, and other commodities. And for fear I may be questioned as to that, I will say that during the period of Federal control I was attached to the staff of the Southern Freight Traffic Committee, and had to do with this very review of mileage scales. We made a careful check of the then existing mileage scales. As result of this study a conclusion was reached that the carriers' previously suggested mileage scales on sand and gravel were too low. Consequently, when, after the termination of the period of Federal control, the carriers, in response to an order of the Georgia Commission, came to consider the mileage scales to be then submitted, they decided that they should suggest the same mileage scale on sand, gravel, crushed stone, slag, and other low grade building materials (Rec., 325).

In arriving at their proposed scales, the carriers were influenced, among other things, by the following considerations:

[fol. 94] 1. That the study made during Federal control, by the Southern Freight Traffic Committee, indicated that the previously proposed scales, particularly on sand and gravel, were too low (Rec., 325).

2. That there was no justifying reasons for suggesting any reductions in the scales previously proposed on crushed stone and slag, although this would be necessary in order to carry the same rates on crushed stone and slag as on sand and gravel, unless the equality be brought about by an increase in the previously proposed rates on sand and gravel (Rec., 325).

3. That whatever scales were determined upon for submittal to the Georgia Commission would also be suggested as the scales for application generally throughout the south, both interstate and intrastate, except to and from points in Florida south of the Seaboard's Jacksonville to River Junction line (Rec., 326).

4. That the scales then determined upon would bring about substantial reductions in many of the then existing interstate and intrastate rates, many of which the carriers considered to be upon a very low basis, having been established over their protest by the Federal or State Commissions (Rec., 326).

5. That, while the uniform application of the proposed mileage scales would increase the then existing specific commodity rates applicable to and from certain points, there were many other movements on which the then existing rates, either specific commodity or mileage, would be decreased (Rec., 326).

6. That the mileage scales submitted in 1916 were for local application; that is, they were to be applied only between points on the same line for single line hauls; that joint rates were to be constructed on combination using as factors 90 per cent of the local rates to and from the junction points; and that, having determined to suggest joint line mileage scales for application to hauls over two or more lines, which scales were made slight differentials higher than the single line scales, the single line scales should be suffi-
[fol. 95] ciently high to warrant their observance as the base on which to superimpose the joint line differentials. The joint line scales submitted in 1921 represented very substantial reductions in the rates yielded by the previously suggested basis for joint hauls, and, very properly, I think, consideration was given to the fact that there should be some increases in the basic single line scales to compensate for the proposed reductions in the joint line haul scales (Rec., 327).

7. That the proposed scales were to be observed as maximum scales, and should not reflect the very low commodity rates then in effect from and to certain points, which originally were established based upon special circumstances

which seemed to be controlling at the same time. Many of the subnormal rates then in effect, as, for example, on sand from Georgia and Alabama points to Montgomery and Birmingham, were originally established to meet local competition at destinations, and with the idea that they would produce revenue which would not otherwise be received, and would utilize empty coal equipment returning to the mines. In other words, it was thought proper that the proposed scales should represent a normal level of rates on these commodities (Rec., 327).

In submitting their revised scales on these commodities to the Georgia Commission in 1921, the carriers, on page 22 of their submittal, made the following statement with respect to the single line scale:

"At present there are numerous varying scales on these commodities applicable intrastate and interstate, as well as in certain instances between different parts of the same line in the southern territory. The present intrastate and interstate rates on sand, as well as those proposed by the carriers in 1916 and those approved by the Railroad Commission of Georgia in 1918, have been analyzed, and the single line rates herewith submitted very closely approximate the average of the present mileage scales on sand. [fol. 96] Rates on sand determined in this manner are submitted to apply also on chert, clay, gravel, slag, shale, etc., notwithstanding that the present rates on these commodities, as well as the rates approved in 1918 by the Commission, increased under General Order No. 28 and Ex Parte 74, are in most cases slightly higher than the rates on sand" (Rec., 328).

By order dated July 14, 1921, the Railroad Commission of Georgia (the predecessors of the Georgia Public Service Commission), required the railroads operating in that state to file with it revised class and commodity rates for the transportation of intrastate traffic within the state of Georgia (Rec., 329).

The Commission indicated that its purpose in entering this order was to correct certain existing discriminations in the rates in the state of Georgia. The rates on classes and commodities from and to certain points in that state were on a lower level, mileage considered, than were the

rates to the great majority of points in the same state (Rec., 329).

The purpose of the proposed revision which the Commission required the carriers to submit was to correct the situation just described, and to establish rates to all points in the state of Georgia made with principal regard for distances. It was also announced by the Commission that it was its desire that there be established between points in Georgia revised class and commodity rates which might preserve the then present revenues of the railroads, and might also be at such level as to permit the use of such rates as a measure for the establishment of interstate rates into and out of the state of Georgia. The revision may, therefore, be said to have three primary purposes:

1. The correction of then existing discriminations;

2. The preservation of the then existing revenues of the railroads; and

[fol. 97] 3. The establishment of a level of rates within the state of Georgia which shall be fairly comparable, mileage considered, with rates into and out of that state (Rec., 329).

In response to this order of the Railroad Commission of Georgia, the carriers, on September 24, 1921, filed with the Commission printed schedules of suggested mileage class and commodity rates. Testimony was offered in support of the suggested rates beginning on October 26, 1921, and continuing until December 30, 1921 (Rec., 330).

Revised class rates between points in Georgia were prescribed by the Georgia Public Service Commission in its order of February 28, 1923. The Commission has from time to time since that date prescribed additional revised schedules of rates to apply on various commodities (Rec., 330).

On October 24, 1923, the Georgia Public Service Commission submitted to shippers and carriers its tentatively proposed commodity rates on sand, gravel, crushed stone, chert, crude clay, slag, etc., and invited from all interested sources frank and constructive criticisms thereof, or relevant suggestions in regard thereto; the Commission advised that it would receive such criticisms and suggestions on or prior to November 26, 1923 (Rec., 330).

The Commission's tentatively suggested rates on sand, gravel, crushed stone, etc., were lower than those which had been previously suggested by the carriers, even after the latter were reduced 10 per cent to reflect the reductions made under I. C. C. Docket No. 13293. The tentatively suggested rates of the Commission were covered by its proposed Commodity Group No. 25 (Rec., 331).

I file as Exhibit No. 40 excerpts from memorandum of criticisms filed for account of the carriers at the hearing before the Georgia Commission on November 26, 1923 (Rec., 331).

[fol. 98] Mr. Burchmore objected to the exhibit on the ground that it is incompetent in that it is an excerpt from a self-serving declaration of the carriers, and that it is immaterial in what it contains; and second, if not accompanied by a tender of the entire memorandum for purposes of examination by counsel, it violates Rule 13 of the Rules of Practice (Rec., 331).

Mr. Walker: Have you intervened in the Thirteenth Section Case?

Mr. Burchmore: I make that objection (Rec., 331).

Mr. Walker: I want to know whether you are a party to that case first before you object (Rec., 331).

Mr. Burchmore: Shall I answer the question, Mr. Commissioner?

Exam. Waters: Did you intervene in this case?

Mr. Burchmore: I did not intervene in any particular cases, except that those cases were all called on one record, and we filed an intervening petition entitled in I think six cases. I don't know which if any case the witness's present testimony is confined to, I understand this is a hearing on a group of six or eight cases (Rec., 331).

Exam. Waters: That is correct (Rec., 332).

Mr. Burchmore: Now, I have intervened in four or five or six of these, I don't know just how many, but it is in my petition (Rec., 332).

Mr. Gwathmey: If the Commissioner please, I think that the exhibit is perhaps subject to criticisms on the grounds made by Mr. Burchmore. The primary purpose in offering it really was to prove the fact that the carriers did seriously protest to the Georgia Railroad Commission against this scale; if that fact may be understood as proved, I don't

insist upon filing the statement that the carriers made as to the grounds of their protest (Rec., 332).

[fol. 99] Exam. Waters: Do you admit the fact?

Mr. Burchmore: I would presume the fact, I think they always do object (Rec., 332).

Mr. Gwathmey: I do not insist on the exhibit (Rec., 332).

Exam. Waters: 40 is withdrawn (Rec., 332).

Mr. Gwathmey: It will not be necessary, I assume, to renumber all these exhibits? (Rec., 332).

Exam. Waters: No, just mark this one withdrawn.

Mr. Doss: In any event, the scale which the Georgia Commission tentatively submitted to the carriers and others for criticisms was opposed by the carriers. The final order of the Georgia Public Service Commission, dealing with the rates on sand, gravel, crushed stone, etc., was entered under date of February 25, 1925, and required that revised rates on these commodities, covered by the Commission's Commodity Group No. 22 (shown as Commodity Group No. 25 in the tentative order), be made effective April 1, 1925. A copy of the Commission's order is attached to and made a part of the petition on behalf of certain Georgia carriers, filed with this Commission on June 5, 1925, and covered by Docket No. 17517 (Rec., 333).

The rates prescribed on these commodities by the Georgia Public Service Commission were actually lower, in some cases, than those which, on October 24, 1923, it submitted for criticism on November 26, 1923. The single line scale prescribed for single line application between points on trunk lines was the same as that previously suggested; but for joint hauls between points on trunk lines, the prescribed scale was uniformly one-half cent per 100 pounds, or 10 cents per net ton, less than the rates tentatively submitted (Rec., 333).

[fol. 100] Paragraph 5 of the Georgia Commission's order authorized the Georgia carriers to substitute the new commodity mileage rates for all existing class or commodity rates, whether higher or lower, except that in no instance should the rates on commodities covered by the order be higher between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other states for the same or greater distance over the same line or lines,

the haul between the Georgia points being included in the longer interstate hauls (Rec., 334).

There were at that time instances where commodity rates on some of the commodities, covered by the order, in effect into and out of Georgia, were lower than the prescribed mileage scales, and it became necessary to make a complete check of the interstate rates into, out of and through Georgia, for the purpose of revising them so as to meet the requirements of paragraph 5 of the Georgia Commission's order (Rec., 334).

After they were furnished with copy of the Commission's order of February 25, 1925, there was not sufficient remaining time to enable the carriers to make this check of the interstate rates and then publish the revised interstate rates effective on thirty (30) days' notice. Accordingly, on March 11, 1925, the Georgia carriers petitioned the Georgia Public Service Commission, asking that the effective date of the order of February 25th, be extended from April 1 to July 1, 1925 (Rec., 334).

In response to this petition, the Georgia Commission issued its supplemental order of March 12, 1925, ordering that, until July 1, 1925, carriers be authorized and required to continue in effect commodity rates then in effect on the commodities covered by its order that were lower than the rates prescribed in the order, and authorized the charging [fol. 101] of higher rates at intermediate points, but not to exceed the maximum schedule of rates prescribed in the order. In other words, the Commission issued a supplemental order postponing until July 1, 1925, all of the increases authorized under its order of February 25, 1925, but requiring that all of the reductions contemplated by its order be made effective April 1, 1925. The Georgia carriers, under protest, made the reductions, effective April 1, 1925, by Agent J. H. Glenn's Georgia Local and Joint Mileage Tariff No. 2, I. C. C. No. A-483. My Exhibit No. 41 shows the protest which was published along with the rates; this protest now being carried in the current tariff, Agent J. H. Glenn's Georgia Local and Joint Mileage Tariff, I. C. C. No. A-529 (Rec., 335).

Exhibit 41 was received in evidence (Rec., 335).

Steps were also taken to revise the interstate rates so as to permit the establishment of the rates covered by para-

graph 5 of the Georgia Commission's order. Carriers submitted through the Southern Freight Association, under Submittal No. 20353, of April 29, 1925, the proposed changes in the interstate rates; these changes were, as a general proposition, arrived at on the following basis:

From points located outside the state of Georgia to points in the state of Georgia, rates were made not lower than the Georgia Commission's prescribed scale for the actual distance via the short line (Rec., 336).

From points within the state of Georgia to points located in other states, rates made not lower than to the Georgia border points directly intermediate to the more distant interstate points (Rec., 336).

Carriers were unable to make the revision effective July 1, 1925, and, upon handling the matter with the Georgia Public Service Commission, the Commission, on June 26, 1925, further extended from July 1st to August 1st that part of its order of February 25, 1925, which was suspended [fol. 102] under the Commission's order dated March 12, 1925. The revised interstate rates were published to become effective August 1, 1925 (Rec., 336).

It was probably these particular rates that led to the error in Mr. Ribe's exhibit to which attention was called today.

My Exhibit No. 42 is a copy of a letter written by Agent Glenn, addressed to the Interstate Commerce Commission, explaining the changes in the interstate rates made effective August 1, 1925 (Rec., 336).

Exhibit 42 was received in evidence (Rec., 336).

The Alabama Public Service Commission, the Chattanooga Manufacturers Association, the Montgomery Chamber of Commerce, and a number of individual shippers, petitioned the Commission to suspend these increases in the interstate rates. The position of the carriers with respect to these petitions for suspension was submitted to the Commission in Agent J. H. Glenn's letter of July 24, 1925 (Rec., 337).

The Commission did not suspend any of the increased rates, except certain of those published by the Louisville & Nashville Railroad, covered by Investigation & Suspension Docket No. 2470. I believe the suspended rates of the Louisville & Nashville Railroad were constructed upon basis

of the mileage scales submitted to the Georgia and Alabama Commissions, while, as I have explained, the increased rates of August 1, 1925, were, as a temporary measure, increased only to the extent necessary to permit the intrastate rates to be changed under paragraph 5 of the Georgia Commission's order. Particular attention is directed to the fact that, with the exception of the rates of the Louisville & Nashville Railroad, under suspension in I. & S. Docket No. 2470, the increases of August 1, 1925, were in the nature of a temporary measure, all of the carriers having in mind at the time that, as quickly as possible, the interstate and intrastate rates would be placed on basis of the carriers' proposed scales (Rec., 337).

[Vol. 103] The Southern carriers have, since August 1, 1925, been giving consideration to the question of revising all of their rates on these commodities, observing the mileage scales which they submitted to the Georgia and Alabama Commissions. The conclusion was reached that this revision would be undertaken immediately; as soon as the complaints now being heard are out of the way, it is the desire and purpose of the carriers to proceed with publication of the revised rates. So far as the rates to, from or via the Atlantic Coast Line Railroad are concerned, our interstate rates are now, with one or two minor exceptions, on basis of the carriers' proposed scales. Our intrastate rates, except where held down by the orders of the state commissions, are also on this basis (Rec., 338).

It is the intention of the carriers to go forward with the revision of all the rates on these commodities in the southeast, and I understand it is also the purpose of the Mississippi Valley lines (Rec., 338).

We are awaiting the result of this investigation (Rec., 339).

The carriers have in mind a revision, observing their proposed scale throughout the south. I could not undertake to say what we would do in case the Commission does not approve in this proceeding the scale which we have suggested. I do not think we would voluntarily extend what seemed to us to be an unduly low scale to or from points where we are not forced to do it. We are proposing to put into effect in the south here a uniform scale (Rec., 339).

There are proceedings pending in most all of these states, except Florida. We have, as I will explain, a proceeding pending in Alabama (Rec., 340).

All the rates that we propose to raise, to put the interstate rates on the basis of the Georgia scale, were permitted to go into effect by the Interstate Commerce Commission, with the exception of certain rates of the Louisville & Nashville Railroad on slag from Copper Hill. The rates from [fol. 104] Copper Hill are still under suspension (Rec., 340).

Mr. Burchmore: It occurs to me that it would not be quite fair for this proceeding to take the form of the carriers seeking and obtaining from this Commission a report intended to equip them to go to the North Carolina Commission, if you please, and force through a revision there of which the North Carolina Commission as far as I can learn has no notice that any consideration is being given to here; and yet is that not the trend this case is now taking? I think it is (Rec., 341).

Exam. Waters: There is no indication that the decision will go any further than the issues in this case, is there? (Rec., 341).

Mr. Burchmore: No, but I understand counsel and the witness were answering as to what they were going to do, and it looks to me as though they were seeking to obtain general approval of a scale here on the ground that it is a general scale, and that then they can use that order with the state Commissions as a force to raise the state rates (Rec., 341).

By Mr. Gwathmey:

Q. Mr. Doss, if I correctly understand the facts, the carriers have heretofore stated repeatedly that the scale proposed by them in 1921 to the Georgia Commission, which is the same scale that they are now again proposing except for the 10 per cent reduction, was intended by them to be applied generally throughout the territory interstate and intrastate, is that right? (Rec., 341).

A. That is correct, yes, with the exception of Florida (Rec., 342).

There has been no secret about our position at any time and we have presented this scale to all of the state commis-

sions. It is our hope that the Interstate Commerce Commission will approve that scale in this case and in the event of such approval it is our purpose to seek to have it established generally, interstate as well as intrastate (Rec., 342).

[fol. 105] My Exhibit No. 43 shows the rates on these commodities between stations on the Coast Line in Georgia prior to April 1, 1925; the rates proposed by the carriers in 1921, reduced 10 per cent; and the single line rates prescribed by the Georgia Commission in its order of February 25, 1925, compared with the intrastate mileage scales on these commodities applicable between stations on the Atlantic Coast Line Railroad in other states through which it operates (Rec., 343).

Exhibit 43 was received in evidence (Rec., 343).

As to Virginia, in every case the present Virginia intrastate rates are higher than those suggested by the carriers. There is a very substantial movement of sand, gravel and crushed stone, under the present Virginia intrastate mileage scales applicable between points on the Atlantic Coast Line Railroad (Rec., 343).

There are no joint line scales applicable intrastate in Virginia, the joint rates being made on lowest combination (Rec., 343).

In North Carolina, the intrastate rates on crude clay and on flagging stone are substantially higher than the carriers' proposed scale (Rec., 343).

The North Carolina scales on chert gravel, sand, slag and crushed or rubble stone are substantially the same as the carriers' proposed scale. For distances 35 miles and under, and for 140 miles and over 70 miles, the carriers' proposed scale is lower, but for distances 65 miles and over 40 miles, and for 300 miles and over 150 miles, the North Carolina scale is slightly lower than the carriers' proposed scale (Rec., 344).

Prior to December 15, 1921, the North Carolina intrastate rates on these commodities were, particularly for short distances, higher than those which the Georgia carriers had, in November, 1921, submitted to the Georgia [fol. 106] Commission. The North Carolina shippers had complained to the North Carolina Commission, particularly

with respect to the rates for short distances, which rates they contended were altogether out of line, due to the flat increase of 20 cents per ton made under General Order No. 28. After the hearing, the North Carolina Commission held that the rates on sand, gravel and stone should be the same, and fixed a new mileage scale for application locally and jointly between points on the North Carolina trunk lines (Rec., 344).

My Exhibit No. 44 is a copy of the North Carolina Commision's report and order of November 25, 1921, which sets out in some detail the circumstances under which the North Carolina rates were changed (Rec., 344).

Exhibit 44 was received in evidence (Rec., 344).

Mr. Doss: Because of the reductions which were made in the rates theretofore in effect, the rates which became effective December 15, 1921, were not, on July 1, 1922, reduced 10 per cent under I. C. C. Docket No. 13293 (Rec., 345).

On page 4 of Exhibit 43 there is shown under the column headed "Clay Gravel (unwashed)" a mileage scale beginning with 57 cents at 5 miles, and extending to 147 cents at 300 miles. These are municipal rates and applicable only on clay gravel, used in the building of public roads (highways), in the State of North Carolina, in which the state, towns or counties have no interest; the tariffs containing these rates so restrict them. They were first established in October, 1913, as result of the North Carolina Commission's Circular No. 193. My Exhibit No. 45 is a copy of the North Carolina Commission's report and order of September 20, 1913, which explain the circumstances under which these municipal rates were established (Rec. 345).

Exhibit 45 was received in evidence (Rec., 345).

[fol. 107] The North Carolina Commission prescribes a joint line scale applicable between points in North Carolina on railroads exceeding 75 miles in length; I will later on deal with this joint line scale (Rec., 345).

The South Carolina Commission has not prescribed specific commodity rates on chert or slag. The scales prescribed by the South Carolina Commission on crude clay

and flagging stone are substantially higher than the carriers' proposed scale. The South Carolina Commission's scale on gravel and crushed or rubble stone is substantially the same as the carriers' proposed scale. It is the same or higher, except for 50 miles it is 85 cents, while the carriers' proposed scale is 86 cents; for 130, 140 and 150 miles the South Carolina Commission's scale is 120, 125 and 130 cents, as against the carriers' proposed scale of 122, 126 and 131 cents, respectively (Rec., 346).

On sand, the South Carolina scale is substantially the same as the carriers' proposed scale, except that for 50 miles the South Carolina scale is 85 cents, as against the carriers' proposed scale of 86 cents; for distances 100 miles, and over 70 miles, the South Carolina scale is 100 cents, while the carriers' proposed scale grades up from 95 cents to 108 cents; for distances over 150 miles the South Carolina Commission's scale runs from 130 cents to 160 cents, while the carriers' proposed scale runs from 121 cents to 167 cents (Rec., 346).

The present single line scales applicable on these commodities in South Carolina are substantially the same as those which have been in effect for many years, except, of course, they have been increased under General Order No. 28 and Ex Parte No. 74, and reduced under I. C. C. Docket No. 13293 (Rec., 346).

Since the termination of the period of Federal control, there have been some slight changes in the rates on sand. It developed that for the shorter distances the rates on sand, in some cases, exceeded the rates on gravel. Accord-
[fol. 108] ingly, the South Carolina Commission, by its Circulars Nos. 247 and 267, reduced its scale on sand, making it not higher than the scale on gravel (Rec., 347).

The carriers now have pending with the South Carolina Commission an application to revise the rates on sand, gravel, stone, etc., by adopting the carriers' proposed single and joint line scales (Rec., 347).

There are no joint line scales applicable on these commodities intrastate in South Carolina. Joint rates are made on combination using 80 per cent of the local rates to and from junction points as factors, subject to full combination observing the principles of the Combination Rules Tariff as maximum. The carriers' proposed joint line scale

will substantially reduce the existing joint line rates applicable intrastate in South Carolina (Rec., 347).

The Florida Commission does not prescribe a mileage scale applicable on chert. The scales prescribed by it applicable on clay, gravel, slag and crushed stone for commercial purposes, are higher than yielded by the carriers' proposed scales (Rec., 348).

The Florida intrastate rates on sand are, we think, on a low basis, being, when originally established, Class P per car of 36,000 pounds; the Class P rates in Florida are lower than the Class P rates in Georgia. They were established at the instance of the Florida Commission, and were in the nature of a compromise of litigation which had extended over a period of about ten years. The present rates are shown under Column 13, page 5, of Exhibit No. 43. For distances under 45 miles the rates are higher than proposed by carriers; for distances beyond 45 miles, the Florida rates range from 83 cents to 172 cents at 400 miles, while the carriers' proposed scale ranges from 86 cents to 189 cents (Rec., 348).

There are shown in the exhibit, under Column 4, between [fol. 109] points in Florida, on clay, gravel, sand and crushed stone, mileage scales of rates applicable only on shipments consigned to state, county or municipal authorities, to be used by such authorities for state, county or municipal roads, streets or bridges. These municipal rates, when first established in 1911, ranged from 40 cents to 100 cents per ton at 300 miles. Subsequently, those applicable on sand have been revised so as not to exceed the commercial rates on sand. There have been no other changes except under General Order No. 28, Ex Parte No. 74 and I. C. C. Docket No. 13293. The rates on clay were increased 25 per cent under General Order No. 28, whereas, on the other commodities, the rates were increased 20 cents per ton (Rec., 349).

There are no joint mileage scales applicable intrastate in Florida. Joint rates are made on combination. Where two lines are involved 90 per cent of the locals, and where more than two lines are involved 80 per cent of the locals, are used as factors. In addition to this deduction, the rates are subject to the Combination Rules Tariff, Agent Jones' I. C. C. No. US-1. Joint municipal rates are made on full

combination, except that the factors have been adjusted to reflect the reductions required under the Combination Rules Tariff (Rec., 349).

Q. Does your Exhibit No. 43 also show a comparison of your proposed rates with the present intrastate rates in Alabama?

A. Yes, sir. The Alabama intrastate rates on sand were, effective October 1, 1907, in accordance with an Act of the Alabama Legislature, made the same as then in effect intrastate in Georgia. There have been no subsequent changes, except the general increases under General Order No. 28 and Ex Parte No. 74, and the 10 per cent reduction under I. C. C. Docket No. 13293. As I have previously pointed out, the Georgia intrastate rates were slightly increased, effective April 1, 1915, but no corresponding change was made in the Alabama rates (Rec. 349).

[fol. 110] The sand rates established between points in Alabama in 1907, have subsequently been made applicable also on chert and gravel. These rates are the same as, or higher than, the carriers' proposed scale, except that for distances 55 miles and over 45 miles, the Alabama scale is 83 cents, while the carriers' proposed scale is 86 cents for 50 miles and over 45 miles, and 90 cents for 55 miles and over 50 miles. For distances over 65 miles, the present Alabama scale grades up from 90 cents to 123 cents at 160 miles, while the carriers' proposed scale for these distances runs from 95 to 135 cents per ton (Rec., 350).

Crude clay between points on the Atlantic Coast Line Railroad in Alabama moves under the Class N rates, which are substantially higher than the carriers' proposed scale (Rec., 350).

The rates on slag between points on the Atlantic Coast Line Railroad in Alabama are in every case higher than the carriers' proposed scale; they were established, effective June 10, 1921, at the request of shippers in the Birmingham district (Rec., 350).

The rates on crushed or rubble stone between points in Alabama are substantially higher than carriers' proposed scales; they were established the first time effective July 24, 1915, and were made the same as then in effect on rough stone, carloads; they have not since been changed, except

that they were increased 20 cents per ton of 2,000 pounds under General Order No. 28, and further increased 25 per cent under Ex Parte No. 74, and reduced 10 per cent under I. C. C. Docket No. 13293 (Rec., 350).

The rates on rough flagging stone between points in Alabama were first established in 1907, as result of the Act of the Alabama Legislature, and were made the same as in effect at that time intrastate in Georgia (Rec., 351).

There are no joint mileage scales applicable on these [fol. 111] commodities in Alabama. The joint rates are made on combinations using 90 per cent of the local rates to and from the junction points as factors (Rec., 351).

The standard minimum weight in South Carolina is 20,000 pounds. It is a little out of date, but still the minimum. The minimums on Exhibit 43, twenty, twenty-five, thirty and thirty-six thousand pounds, are the minimum weights in fact, but do not really mean anything. It just happens to be a minimum that has been in effect for many years. They never changed them even when they changed the rates (Rec., 351).

On September 21, 1921, under its Docket No. 4136, the Alabama Public Service Commission issued citation, addressed to all of the Alabama carriers, to show cause why that Commission should not establish a just and reasonable scale of freight rates on all commodities moving between stations in Alabama, and assigning the citation for hearing on November 7, 1921, at its offices in Montgomery, Alabama. The citation stated that at this hearing the Commission would also hear evidence regarding any and all rate discriminations in Alabama, for the purpose of removing same (Rec., 352).

At the hearing in Montgomery, on November 7, 1921, representatives of the carriers submitted to the Alabama Commission suggested class and commodity mileage rates and exceptions to Southern Classification, which were, practically without exception, the same as had previously been submitted by the Georgia carriers to the Georgia Commission (Rec., 352).

The Alabama carriers presented their testimony, in justification of the proposed revision submitted by them, at hearings which were held by the Alabama Commission beginning February 6, 1922 (Rec., 352).

Testimony of shippers, and others, was not immediately taken, but subsequently, from time to time, the Alabama Commission has heard, and in some instances completed, the taking of testimony on various commodities (Rec., 352).

The testimony of certain of the shippers with respect to [fol. 112] the proposed rates on sand, gravel, stone, slag, etc., was taken by the Alabama Commission at hearings held in Montgomery on July 8 and 9, 1925. It was understood at the time that there would be a subsequent hearing, at which further testimony from the public and the rebuttal testimony of the carriers, with respect to the rates on these commodities, would be taken (Rec., 353).

The Alabama Commission set the further hearing for October 6, 1925, but the hearing was postponed. The Alabama Commission, under date of February 5, 1926, has indefinitely postponed its investigation of the rates on these commodities, pending determination by the Interstate Commerce Commission of the issues involved in I. C. C. Docket 17517, and related cases. In this connection, I file as Exhibit No. 46 a copy of the Alabama Public Service Commission's order of February 5, 1926 (Rec., 353).

Exhibit 46 was received in evidence (Rec., 353).

I would understand from its order of February 5, 1926, that the Alabama Commission has indefinitely withheld a decision on the matter of sand and gravel awaiting the action of the Interstate Commerce Commission in this case (Rec., 353).

My Exhibit No. 47 shows specific commodity rates which have, since July 1, 1922, been prescribed for application via Atlantic Coast Line Railroad on Alabama intrastate traffic by the Alabama Public Service Commission. The exhibit shows the distances and what the rates would be on the carriers' proposed scale; the rates formerly in effect are also shown (Rec., 354).

Exhibit 47 was received in evidence (Rec., 354).

The Alabama Commission by its order dated June 6, 1922, Docket No. 4241, prescribed rate of 81 cents per ton of 2,000 pounds on sand and gravel, c. l., from Montgomery to Dothan, Alabama. It found that the previous rate of 113.3 cents ton was unreasonably high and prejudicial, in [fol. 113] that it exceeded rates of other carriers for ap-

proximately the same distance and under similar traffic conditions. The record made at the hearing of the case indicates quite clearly that the Commission had in mind the then existing rates from Alabama and Georgia producing points to the Birmingham and Atlanta districts. Subsequently, under Docket No. 4373, the Commission's order was amended, July 1, 1923, to provide that the 81 cents rate was not subject to the Combination Rules Tariff. The Commission, by approval No. 311, of April 28, 1924, authorized an increase in this rate from 81 cents to 90 cents. The Commission concluded that the 90 cent rate, which it had in mind prior to July 1, 1922, should not have been subjected to the 10 per cent reduction (Rec., 354).

By order dated January 24, 1924, in Docket No. 4453, the Alabama Commission fixed rate of 81 cents from Montgomery to Ozark, Alabama. This was the rate then in effect to Dothan, a point beyond Ozark (Rec., 355).

Recess for the day.

[fol. 114] February 18, 1926.

R. J. Doss resumed the stand and testified further on direct examination:

Mr. Gwathmey: I shall try not to trespass upon your patience, but this is a very important case, and I want to explain for the record the scope of our testimony with which we were dealing at the adjournment yesterday. You will recall that a witness for the complainants filed Exhibit 15, showing the rates on sand from Montgomery. We desire to explain the facts upon which the carriers rely in contending that those rates are unduly low and should not be used for comparative purposes (Rec., 356).

Mr. Doss: Cantalow Spur is on the Western Railway of Alabama, about 9 miles west of Montgomery. The rates from Cantalou Spur, which are shown on my Exhibit No. 47, were fixed by the Alabama Railroad Commission. That Commission issued a report in the original case in fixing those rates and when the case was reheard on the petition of the defendant carriers, issued a supplementary report (Rec., 357).

By Mr. Gwathmey:

Q. According to the best of your knowledge and belief, as based upon that report, upon what basis were those rates fixed by the Alabama Commission? (Rec., 357.)

Mr. Burchmore objected on the ground that the report should speak for itself. After discussion, the witness was given permission to file a copy of the report of the Alabama Commission within ten days.

(Insert a paragraph telling about this being sent in, which I will dictate later.)

[fol. 115] My Exhibit 48, consisting of 12 pages, shows the scales which are here in issue, compared with the mileage scales applicable on intrastate traffic between various stations on the Atlantic Coast Line Railroad, and is self-explanatory (Rec., 360).

Defendant's Exhibit No. 48 was thereupon received (Rec. 360).

My Exhibit No. 49 is a similar statement consisting of 13 pages, comparing the scales here in issue with the mileage scales on these commodities applicable between points on lines other than the Atlantic Coast Line in southern territory (Rec., 360).

Defendant's Exhibit No. 49 was thereupon received (Rec., 360).

My Exhibit No. 50 is along similar lines and compares the scales here in issue with the averages of the interstate and intrastate commodity mileage scales applicable in southern territory (Rec., 360).

Defendant's Exhibit No. 50 was thereupon received (Rec., 360).

It is proper to explain that the averages of the scales covered by this exhibit are the same averages as were filed in the C. & W. C. Case, I. & S. Docket 1848. The Commission in its report in that case referred to the averages as being the averages of the intrastate rates in South Carolina, Georgia, North Carolina and Tennessee. That statement is not exactly correct. The averages were prepared

during the period of Federal control and embrace the mileage scales interstate and intrastate throughout the southern region. While my exhibit shows the averages as being of the present scales, that is not altogether correct. They are the averages taken during Federal control, increased 25 per cent under Ex Parte 74 and reduced 10 per cent effective July 1, 1922. To the extent that there have been changes in those scales since Federal control, the averages shown in this exhibit would not reflect the exact average of the present scale (Rec. 361).

Joint-line scales are not generally applicable in southern [fol. 116] territory. Prior to the period of Federal control, there was not so far as I know, any joint line scales in southern territory, except in the state of North Carolina, the intrastate rates in some cases in that state being on a joint line scale (Rec., 362).

My Exhibit No. 51 compares the joint trunk line scales here in issue with all of the joint line scales applicable on these commodities in southern territory (Rec., 362).

Defendant's Exhibit No. 51 was thereupon received.

Mr. Doss: In the last column is shown under the heading "Agent J. J. Cottrill's I. C. C. No. 554", the joint line scale applicable intrastate in North Carolina. In the two columns to the left of that column respectively are the joint line scales of the Southern Railway applicable between Southern Railway and affiliated lines and the Clinchfield Railroad and Southern Railway, that is it is applicable between stations on the Clinchfield Railroad on the one hand and Southern Railway stations on the other. The exhibit shows that the joint line scales applicable on the Southern Railway and Clinchfield Railroad are identically the same as those which the carriers are here proposing. The North Carolina intrastate scale was established by the North Carolina Corporation Commission's Circular No. 224, effective December 15, 1921, a copy of which is attached to my Exhibit No. 44. The North Carolina joint scale is in most cases lower than the carriers' proposed scale, although in some cases the rates are the same, and for distances 100 miles and over 85 miles, the carriers' proposed scale is lower than the North Carolina joint scale. The North Caro-

lina joint scale is throughout higher than the Georgia Commission's joint scale applicable on washed gravel, slag, crushed stone, etc., and as the North Carolina Commission applies the same scale on all of these commodities, it naturally follows that the North Carolina scale is substantially [fol. 117] higher than the Georgia Commission's scale on sand, gravel, etc. The carriers' proposed scale when submitted to the Georgia Commission in 1921 was higher than the carriers' proposed single line scale, beginning with 30 cents a ton for the shorter distances, and the differential gradually fading to 10 cents for 460 miles, the maximum distance covered by that scale. Both scales were reduced 10 per cent effective July 1, 1922, consequently the differentials are now 10 per cent less than those originally submitted: in other words, in the present scale, the differentials range from 27 to 9 cents (Rec., 364).

In making up my exhibits, I find one slight error in the joint line scale covered by the carriers' original proposal, and that is for 240 miles and over 220, the original joint line scale was shown as $1.99, the proposed single line scale for those distances was $1.70, and on the basis of the joint line differential of 20 cents proposed at that time, the joint line scale should have been $1.90 instead of $1.95. Reduced to the present figures, it should be $1.71 instead of $1.76. The North Carolina Commission's joint scale was made differentials beginning with 20 cents for distances 100 miles and under, and gradually was reduced to 10 cents for 400 miles (Rec., 364).

The expense of handling this traffic over two or more lines is greater than the expense of a one-line haul. The Georgia Commission's proposed single line scale is, we think, too low, when the entire revenue accrues to the line performing the single line scale. But when we get beyond 100 miles, they allow no addition when the service has to be performed by two or more lines, although the expense is greater than for the single line service (Rec., 365).

Q. When shipments move in this territory for distances over 100 miles are they or not usually over more than one line?

A. Well, that depends; take this particular traffic moving within the state of Georgia to points on the Coast Line, out-

side of sand there is no production of it on the Coast Line, and naturally it would have to move two or more lines (Rec., 365).

[fol. 118] As I have just stated, prior to the period of Federal control, there were no joint line scales applicable intrastate in Georgia or generally throughout the south, and following our submittal on revised rates to the Georgia Commission in 1921, that Commission has since issued orders prescribing revised rates, in which are shown both single and joint line scales (Rec., 365).

My Exhibit No. 52 shows in cents per ton of 2,000 pounds for representative distances, the amounts by which the joint line rates exceed the single line rates on Classes 6 and D and on various commodities under the carriers' proposed scales, and under the mileage scales which have since 1921 been prescribed by the Georgia Public Service Commission (Rec., 366).

Defendant's Exhibit 52 was received in evidence (Rec., 366):

On waste wood, shown on page 2 of the exhibit, no differentials are shown for distances beyond 260 miles, that is for the reason that neither a single line nor a joint line scale was prescribed for those longer distances. On brick and fire clay the joint line differential for 70 miles and under is 20 cents, and for 80 miles and over 70.10 cents, and for distances beyond 80 miles, nothing. The carriers had originally suggested that the trunk line scale on brick and clay products be made higher than the single line scale beginning with 54 cents at 5 miles, and scaling down to 83 cents for 460 miles, those differentials reflected the 10 per cent reduction. However, it was found in undertaking to work out specific rates under these scales, many departures therefrom would be necessary because of fourth section difficulties. The situation was further complicated by reason of the desire of certain carriers and shippers that large groups of origin be observed. There were also very strong objections from the interested shippers to both the single and joint line scales. The carriers finally concluded that the best solution of the difficulty would be to reduce the joint line differentials, and to merge the single and joint line scales at 80 miles. All of that was set out in I. & S. Docket 1885, the Brick and Clay Products Case (Rec., 367).

[fol. 119] My Exhibit No. 53 shows similar information as to how the Alabama Commission has dealt with the two-line differentials in its scales.

Defendant's Exhibit No. 53 was received (Rec., 367).

All of these scales have been established since 1922 in somewhat the same manner as have the Georgia Commission's scales (Rec., 367).

My Exhibit No. 54 simply shows for comparative purposes certain differentials applying in the case of rates on lumber. We had originally suggested somewhat the same character of joint line differentials on lumber; by that I mean, they started out at the highest figure for the low distances, and faded away to a [illegible] figure for the long distances, but in working out the rates on lumber in Carolina territory, and from the southeast to Carolina territory, we ran into somewhat the same sort of difficulties we had encountered in the brick adjustment, and it became necessary, as we saw it, to merge the scales at 160 miles (Rec., 367-368).

Defendant's Exhibit No. 54 was received (Rec., 368).

It will be seen from Exhibit 54 that we increased the scale to compensate for the loss on the joint line scale in that it was not made higher than the single line scale first proposed (Rec., 368).

The rates referred to in Exhibit 54 have been published but are under suspension. I cannot give the tariff reference. It is lumber from the southeast to Carolina territory and between points in the Carolina territory (Rec., 369).

The lumber rates shown on Exhibit 54 as the Georgia scale are the scale which the carriers submitted to the Georgia Commission. It has not been approved by the Georgia Commission (Rec., 370).

Exhibit No. 55 is simply excerpts from certain decisions of the Interstate Commerce Commission in other cases dealing with the question of differentials single line versus joint line scales, and is offered for the convenience of all [fol. 120] parties (Rec., 370).

Defendant's Exhibit 55 was received in evidence.

My Exhibit No. 56 is simply a statement showing the extent of the movement of these commodities over various

carriers in southern territory and also shows the average load, as indicated by the reports to the Interstate Commerce Commission. It contrasts this movement in the south with movements in other districts of the United States and shows the very great importance of this tonnage in the south (Rec., 371).

Defendant's Exhibit No. 56 was received.

Exhibit 57 shows the carriers' proposed scales and the Georgia Commission's scales applicable for single and joint line hauls on these commodities and the earnings in mills per ton per mile thereunder. Since this exhibit was prepared, I notice on page 1 in the third column, opposite 10 miles, the figure 100 should be 50, under the carriers' proposed scale (Rec., 372).

Defendant's Exhibit No. 57 was thereupon received (Rec., 372).

It appears that for distances beyond 200 miles, the earnings under the carriers' proposed single line scale are less than 7 mills and beyond 240 miles under their proposed joint line scale the earnings are less than 7 mills. We do not consider it very desirable traffic, if it pays less than 7 mills per ton per mile, especially for distances as short as 200 miles (Rec., 372).

If the Georgia Commission's single and joint line scales on crushed stone, slag and washed gravel, their lower scales, be extended at the same rate of progression as was observed for distances beyond 260 miles, that is 10 cents per ton for each 60-mile block, the rate at 500 miles would be $1.90 per ton, or 3.8 mills per ton per mile. At 800 miles, the scale would be $2.40 per ton, or 3 mills per ton per mile. At 1,040 miles, the scale would be $2.80 per ton, or 2.7 mills per ton per mile (Rec., 373).

[fol. 121] Our earnings on crushed stone, slag and washed gravel, under an extension of the Georgia Commission's scale would get down as low as 2.7 mills per ton per mile. On sand and gravel, it would be relatively lower by 10 cents per ton, if the scale throughout was made the same differential under stone (Rec., 373).

The single and joint line scales are the same in the Georgia Commission's order beyond 100 miles, but sand

and clay gravel are made 10 cents less than stone, slag and washed gravel (Rec., 373).

Commissioner Lewis: Who moves this stuff any thousand miles?

Mr. Gwathmey: There are some pretty long movements. I said practically nothing, 2.7 mills per ton per mile I would say is pretty near nothing, but there are movements, not a great many, on which our earnings get down considerably below 7 mills per ton per mile, and even below three or four mills per ton per mile, and we regard traffic of that sort as paying mighty little. We are going to show something about the length of some of these movements (Rec., 374).

The proposed joint line scale of the Georgia Commission will apply to hauls over two or more lines, and when one of those carriers receives only a small part of a long haul, that is they perform a small part of the extended haul, its revenue per ton mile will be no more than yielded by the through rate for the longer haul, unless of course in the division of the rate the line performing only a small part is allowed a greater prorate proportion than the carrier or carriers performing the greater part of the haul, but if such allowance is made, the shrinkage comes out of a very low proportion received by the carrier or carriers performing the greater part of the haul (Rec., 375).

In illustration, the Georgia Commission's scale on sand and gravel for joint haul of 400 miles is $1.70 a ton, which yields, as shown in my exhibit, 4.2 mills per ton per mile. If this traffic moves 50 miles over one railroad and 350 miles over another, and the rate is divided on a mileage [fol. 122] prorate, the carrier performing the 50 mile haul will receive only 21 cent per ton, which for a car of 50 tons yields only $10.50. On the other hand, if the rate be divided using the local rates of each railroad as factors, the lien performing the 50 mile haul will receive one-third of the rate, or 57 cents per ton. This leaves the carrier performing the 350 mile haul a proportion of $1.13, which yields only 3.2 mills per ton per mile (Rec., 375).

The movement of this traffic is very frequently over at least three lines of railroad, and particularly so to points on the Atlantic Coast Line in south Georgia. Considerable of this traffic originates at points on the Georgia Rail-

road. The principal clay gravel production in Georgia is at Norris, Georgia, a point on the Georgia Railroad. Te be delivered at points on the Atlantic Coast Line in Georgia, it is always necessary that it move over three or more separate railroads. If the total distance is 400 miles, and the haul over the initial carrier is 100 miles, and the intermediate carrier 100 miles, and the destination carrier 200 miles, the rate prescribed by the Georgia Commission would be $1.70 a ton; of course, if it is divided on a mileage prorate, the initial carrier would receive one-fourth of the rate, or 43 cents a ton, the intermediate carrier one-fourth, 42 cents, and the destination carrier one-half, or 85 cents, and that is a per ton per mile yield of 4.2 mills for each line. On a carload of 50 tons the initial carrier would receive only $21.50 for the haul of 100 miles, or 21.5 cents per car mile. The destination line would receive $42.50 or 21.25 cents per car mile. Now, if the rate be divided using the local rates of each carrier as factors, the initial carrier will receive 31 per cent, the intermediate 30 per cent and the terminal carrier 39 per cent, equivalent to 53, 61 and 66 cents per ton respectively. Now, on this basis, the destination carrier for a haul of 200 miles would receive only 66 cents per ton, which is 3.3 mills per ton per mile (Rec., 376).

These are the earnings under the scale prescribed by the [fol. 123] Georgia Commission and where I have referred to divisions based on the local rates of each line as factors, they are on the basis of the divisions fixed by the Georgia Commission. Regardless of how rates are divided, they are so low that no one of the carriers would receive what is considered reasonable revenue. Of course, any joint rate has to be divided somehow (Rec., 377).

Commissioner Lewis: Is this a division case in any feature of it? (Rec., 377).

Mr. Gwathmey: I could understand that ordinarily no question of divisions is involved where the reasonableness of a rate alone is in issue, but there are two reasons why it seems to me it is proper to refer to it here; one is, as Mr. Doss has just stated, the Georgia Commission in its order fixed the basis of divisions; the second reason is that, as we stated a while ago, we have taken every conceivable basis of divisions, and undertaken to show by this statement which Mr. Doss has just made that on no one of those bases

would there be adequate revenue or could there be adequate revenue to the participating carriers (Rec., 377).

Commissioner Lewis: The difference on 200 miles when you use that as an illustration, is 14 cents, the difference between $1.30 and $1.44; would that make any material difference in this factor of divisions that you are analyzing now? (Rec., 377).

Mr. Doss: We think when you come to divide these rates, 1 cent is a thing to be fought over, and 19 cents might change it a whole lot. The rates are so low we just can't divide them on our own scale (Rec., 378).

Mr. Brooker: I have tried not to object to any of this testimony going into this record, but it does seem to me in comparing divisions that it should take into consideration the divisions they get on other traffic, and make a comparison with that, rather than to attempt to show that their earnings under a division of the through rate on sand and gravel are low in proportion to what they get for the local [fol. 124] movement; in other words, on all traffic the earnings under divisions are considerably lower than that they get on the local traffic, say for instance, 7 mills at 200 miles (Rec., 379).

Mr. Gwathmey: That was not the purpose. We are not comparing the divisions received here with the divisions received on other business.

Mr. Brooker: If you did that, it would be all right (Rec., 379).

Mr. Burchmore: Is this question wide open, or is it restricted?

Mr. Gwathmey: I regard this as an exceedingly important element in the case. In a dispute as to the reasonableness of the rate, the question of the division of the rate between the participating carriers is not ordinarily relevant. That is not what we are trying to show here. Nor do we undertake to compare the divisions that any of the lines receive on sand and gravel with the divisions that are received on other traffic. The purpose is to show that regardless of what basis of divisions is used, whether a mileage prorate or on the basis of the local rates, this business which moves very largely over two or more railroads would move under rates so low that it would not be possible for any one of the carriers to obtain reasonable earnings. I submit that is pertinent evidence (Rec., 380).

Mr. Burchmore: I move to strike all reference to the question of divisions on the ground that it is irrelevant and immaterial to this inquiry. If this objection is not sustained and the evidence is not stricken, I propose to cross-examine on the question of divisions (Rec., 381).

Mr. Mohr: The question of divisions in this particular case goes to the earnings that the carriers will obtain on traffic handled over two or more lines under a scale which the carriers feel is almost on the verge of being non-compensatory, and it is one of the methods we have adopted as showing the low measure of the rates (Rec., 381).

[fol. 125] Mr. Cotterill: Insofar as the evidence may have been tendered in support of the theory that by reason of the measure of the rates the assessment of an additional charge for joint haul is necessary, we support the carriers that the evidence is relevant.

Examiner Waters: I think for that purpose it is relevant.

Mr. Gwathmey: I hope the Examiner's ruling does not mean that it is not relevant for any other purpose (Rec., 381).

Mr. Cotterill's point was that he had no objection to evidence of this sort as bearing upon the question of what was a proper differential between a joint line and a single line rate.

Mr. Cotterill: I was not considering the question of what would be a proper differential, but it seemed to me that insofar as the evidence is tendered to indicate that on commodities of this character, where the measure of the charges is inevitably lower than on most traffic, it is appropriate to indicate the necessity for a joint line differential of some measure since if the single line rate be divided between two carriers, it would make the revenue non-compensatory (Rec., 382).

Mr. Gwathmey: I would like the record to show that we ask that this testimony be received for the purpose of showing, as we are attempting to do, that the scale as fixed by the Georgia Railroad Commission is unduly and unreasonably low (Rec., 382).

Mr. Price: I don't want to enter into cross examination, but I think it is proper right at this time that the record should show just why the Georgia Commission prescribed

these divisions that are apparently complained of. The law under which the Georgia Commission was created requires of the Commission that in estabishing joint rates, it shall fix the divisions of those rates, and I wanted to ask Mr. Doss if in this particular case covering sand, gravel, etc., if the Georgia Commission did not leave it optional with the [fol. 126] carriers to fix their own divisions? (Rec., 383.)

Mr. Doss: That is correct; the order that is under attack here states in paragraph 7 that the joint rates provided for herein are to be divided on the same basis as provided in the Commission's class rate order dated February 28th, effective May 1, 1923, and in that order they did fix this basis of using the local of each line as factors, but leaving it optional with the carriers to arrange other divisions if they saw fit. But these rates on sand and gravel are so low that if we didn't have this order of the Georgia Commission, I don't know what we would do about divisions, we would never have been able to arrange any satisfactory divisions (Rec., 383).

Exam. Waters: We have had enough of divisions; we will proceed with the testimony (Rec., 383).

Mr. Gwathmey: I don't understand your ruling to be that it was excluded? (Rec., 384.)

Exam. Waters: No.

My next Exhibit is No. 58, which is a statement showing for representative distances rates in cents per net ton, revenue per car and per ton per mile on basis of average per car loading of sand, gravel, crushed stone and slag, compared with the rates and revenue on other low grade commodities under the mileage scales proposed by the carriers and as prescribed by the Georgia Public Service Commission (Rec., 384).

Defendant's Exhibit No. 58 was received in evidence (Rec., 384).

Mr. Doss: While it is true that sand, gravel, slag and crushed stone are very low grade commodities, and load heavily, and are handled in open top cars, with a minimum risk, these conditions are reflected in the rates that the carriers have suggested. It will be noted from the exhibit that for hauls of 25 miles, the per car earnings on sand,

[fol. 127] gravel, etc., on the basis of the scale suggested by the carriers are lower than on any other commodity except waste wood. This waste wood scale is a sort of transit arrangement under which waste wood, stumps and things of that kind are gathered up in the fields where the land is being cleared, and carried to distillation or reduction plants for the manufacture of naval stores and products of that kind (Rec., 387).

The exhibit shows that the carriers' proposed rates on sand and gravel are, on the whole, generally lower than on the other commodities shown (Rec., 385).

My Exhibits 59 to 62 show various comparisons of the carriers' proposed rates on these commodities with other rates (Rec., 385).

Exhibit No. 60 compares the rates here in issue with those in effect from Lylesville, North Carolina, Peedee, North Carolina, and Medlin, Alabama. All are important shiping points (Rec., 385).

Defendants' Exhibits 59 and 60 were received (Rec., 385).

Exhibit No. 61 compares the rates here in issue from Steel's Creek, South Carolina, and other shipping points in that vicinity on the C. & W. C. Railway. The rates in effect from Steel's Creek are also in effect from the other shipping points and are on the basis of the carriers' proposed scale. They were approved by the Commission in I. & S. Docket No. 1848 (Rec., 386).

Defendants' Exhibit No. 61 was received.

Exhibit No. 62 compares the current rates from Montgomery, Alabama, with the rates here in issue. It will be seen from this exhibit that practically without exception the present rates from Montgomery are on the carriers' proposed scales (Rec., 386).

Defendants' Exhibit No. 62 was received (Rec., 386).

My Exhibit No. 63 shows the rates on sand and gravel [fol. 128] from pits in the Montgomery, Alabama, district to representative points on the Atlantic Coast Line Railroad in effect prior and subsequent to May 14, 1923 (Rec., 386).

Defendants' Exhibit 63 was received.

Prior to May 14, 1923, there was no uniformity in the basis which was observed in establishing rates on sand and gravel from the Montgomery district to points on the Atlantic Coast Line Railroad. Pits are located within the switching limits of Montgomery, and Jackson's Lake and Prattsville Junction and Cuseda on the Louisville & Nashville Railroad, all three of which are within 10 miles of Montgomery, at Cantalou Spur on the Western Railway, 9 miles from Montgomery, and at various points on the Western Railway of Alabama east of Montgomery and as far as Chehaw, 39 miles from Montgomery. Generally speaking, the rates which were in effect prior to May 14, 1923, from the Western Railway pits, of which Chehaw and Cooks are representative, were the same as from Montgomery. In some cases, however, the rates from Montgomery have been revised on the basis of carriers' proposed scale, without a corresponding revision from the Western Railway pits. From the Louisville & Nashville Railroad pits, of which Jackson's Lake is representative, the rates were then made about 10 cents per ton higher than from Montgomery. The situation gave considerable trouble, particularly because of the higher rates from the Louisville & Nashville Railroad pits, and it was determined to revise the rates on the basis of the carriers' proposed scale, except that to points 150 miles or more from Montgomery, the rate yielded by the scale from Montgomery was applied from all pits in the district, including those on the Western Railway and the Louisville & Nashville Railroad. The adjustment which became effective May 14, 1923, as shown in the exhibit, was on the revised basis which I have just mentioned. An error was made, however, in applying the group basis from the Western Railway pits located more than 15 miles from [fol. 129] Montgomery. The carriers proposed to correct this error by applying the Montgomery rates from pits within fifteen miles of Montgomery to points on the Atlantic Coast Line 150 miles or more distant from Montgomery; from pits more than 15 miles from Montgomery, the rates are made on the basis of the joint or single line mileage scale as the case may be (Rec., 387-388).

Now, my Exhibit No. 64 shows the distances, the present rates and the rates yielded by the mileage scale from Mont-

gomery, Cooks and Chehaw to representative points on the Atlantic Coast Line (Rec., 388).

Defendants' Exhibit No. 64 was received in evidence.

Mr. Doss: We do not propose at this time to change the present basis from Cooks, but from Chehaw the rates will be changed to the basis of the mileage scale applied to the distance from Chehaw (Rec., 388).

My Exhibits 65, 66, 67, 68 and 69 are simply additional rate comparisons bearing on the reasonableness of the rates in issue. I want to say as to No. 65 that the present rates from Williams, Georgia, to points from Lovett, Florida, to Hampton Springs, Florida, inclusive, are less than the carriers' proposed scale. The figures shown under the column headed "Carriers' proposed scale" are the trunk short line scales, those stations being located on the South Georgia Railroad (Rec., 389).

Exhibits 66, 67, 68 and 69 compare various rates on slag with the carriers' proposed scale and the Georgia Commission's scale. Exhibit No. 69 covers the present rates on slag from the Birmingham district. It will be seen from this exhibit that the present rates from the Birmingham district on slag are either on or higher than the carriers' proposed scale. That is of interest in connection with the other exhibits which are filed showing the rates on gravel from Montgomery to be on the carriers' proposed scale (Rec., 389).

[fol. 130] Defendants' Exhibits Nos. 65, 66, 67, 68 and 69 were received.

My Exhibit No. 70 shows the former and present rates on sand and gravel from Norris, Georgia, to Atlantic Coast Line stations in Georgia, the Atlantic Coast Line's distances and local rates from Albany, Georgia, together with its proportions out of the former and present rates (Rec., 390).

Mr. Burchmore: I object to the exhibit on the ground that it purports to show present and proposed divisions and introduces matter not material to or at issue in this proceeding.

Exam. Waters: The objection will be noted.

Defendants' Exhibit No. 70 was thereupon received.

Mr. Brooker: I also object because of the attempt to compare the divisions under the present through rates with local rates from division points (Rec., 390).

Mr. Burchmore: You will notice on Exhibits 70 and 71, that one of the carriers gets increased earnings under the reduction in rates and the other carrier gets reduced earnings. Are we going into the question of the propriety of increasing the division to the initial carrier when the Georgia Commission reduces the rate? That is one point of my objection (Rec., 390).

Mr. Gwathmey: These two exhibits, as stated, were for the purpose of showing the discrimination and the effect of the discrimination, as bearing upon our thirteenth section petition. Testimony has already been offered here to the effect that various tonnage that formerly moved into Georgia from points out of the state have since 1925, when the Georgia Commission's order became effective, moved now from points in the state, and we are merely trying to show how that situation has affected the revenues of the interstate carriers, and for that purpose of pointing out what the Atlantic Coast Line, for example, earns on business in one case as compared with the other (Rec., 391).

Mr. Burchmore: This does not show any loss of tonnage [fol. 131] from interstate destinations, or refer to tonnage from interstate destinations (Rec., 391).

Mr. Gwathmey: I didn't say it did.

Mr. Burchmore: You say that is what it is being used for.

Exam. Waters: We will let it in (Rec., 391).

The distances shown from Norris, Georgia, are constructed over whatever the rate basing line is, the short line. In the application of the Georgia Commission's scale, we have to use three or four lines if it makes the short line (Rec., 391).

Mr. Burchmore: I make the same objection on Exhibit No. 71 and ask for a ruling (Rec., 392).

Exam. Waters: The objection will be noted (Rec., 393).

Defendants' Exhibit No. 71 was received.

The state of Georgia formerly secured a large part of its requirements of clay gravel from C. & W. C. pits, but since

April 1, 1925, the effective date of the Georgia Commission's order, the state of Georgia has secured its clay gravel from Norris, Georgia, and other places in Georgia. Consequently, the reduction in the Georgia rates not only took away from the Atlantic Coast Line and its affiliated line, the Charleston & Western Carolina Railway, the movement from the C. & W. C. pits, and the entire freight revenue that accrued under those rates, but we were required to participate in joint rates applicable from points in Georgia and accept very much lower proportions (Rec., 393).

In my Exhibit No. 71, it will be noted that the present rate from Cooks, Alabama, to Jacksonville, Florida, is $1.89, and that the Georgia Commission's scale applied to the distance would make a rate of $1.60. Now, even under the present rate, $1.89, and allowing the line up to Montgomery only 25 cents a ton, there is left $1.64 to cover a single line haul of 390 miles. Now, that is only 21 cents per car mile on a 50 ton car. The Atlantic Coast Line not only [fol. 132] has to haul the car loaded from Montgomery to Jacksonville, but it has to return the empty (Rec., 394).

The tariffs containing the present rates on sand from the Birmingham district to South Georgia, which, as I have just shown, are on the carriers' scale, provide that those rates only apply via certain routes. For example, to Atlantic Coast Line Railroad stations, the rates apply only through Albany in connection with the Central, that being the shortest route. The rates are so low that they cannot be applied with profit via the route using the Louisville & Nashville Railroad from Birmingham to Montgomery, thence Atlantic Coast Line, which route in a number of cases is a short route (Rec., 394).

Mr. Cotterill: I ask that the part of the answer be stricken in which mention is made of a profit. Profit can be considered only as the difference between expense and related receipts and I do not understand there is any evidence as to the expense of handling the business.

Mr. Gwathmey: We will be glad to amend it and save reasonable revenue.

Mr. Cotterill: Stated in that form, it would be a mere conclusion of the witness and I have no objection to it (Rec., 395).

Well, the traffic of course is competitive as between the lines at Birmingham, and they are not going out of the

business as long as they think there is any profit in it to them (Rec., 395).

The Louisville & Nashville Railroad feels that it cannot haul freight from its connections at Birmingham to the connection with the Coast Line at Montgomery for less than 62 cents per ton; the rates are simply not high enough even on the Georgia Commission's scale to permit of that route participating and observing that minimum (Rec., 396).

The rates as now in effect do not apply via the Louis- [fol. 133] ville & Nashville Railroad (Rec., 396).

There is a very large movement of slag from Birmingham to Jacksonville. The tariff does apply via the Louisville & Nashville Railroad from Birmingham to Jacksonville, and considerable business has moved that way, but it is not moving that way any longer on account of the lowness of the rate (Rec., 396).

The present rate from the Birmingham district to Jacksonville is $2.03 per ton; if you allow the Louisville & Nashville Railroad a minimum of 62 cents from Birmingham to Montgomery, and the initial line in the Birmingham district takes an arbitrary of 34 cents, you have the total minimum to Montgomery of 96 cents a ton, of course that leaves out of the $2.03 rate, it leaves only $1.07 a ton, which would be 2.7 mills per ton per mil- for the Atlantic Coast Line, or on a 50 ton car, only 15 cents per car mile (Rec., 397).

Under the Georgia Commission's scale, the rate would be $1.60 a ton and our proportion would be 94 cents on that basis. The present rates from Birmingham are so low that the carriers themselves have found it practically impossible to arrange any divisions under those rates (Rec., 397).

Mr. Cotterill: I have refrained from assuming objections of such a character. I just take it for granted that in all of that character of question and answer, what is meant is that in the judgment and conclusion of the carriers, the charges are so low for this, that and the other thing, there is no necessity to repeat my objections constantly, on the idea that it is both a conclusion first, and secondly not supported by any definite evidence as to the profitableness of the rates (Rec., 397).

Mr. Gwathmey: That is not the purpose at all; you misapprehend if you have that idea. We have shown definite figures here for the purpose of proving to the satisfaction of everyone that it is impossible to divide the rates on a basis that will yield a reasonable return. If your question goes only to the matter as to what the carriers con- [fol. 134] sider a reasonable return, all right (Rec., 398).

Mr. Cotterill: Well, have you undertaken now, Mr. Gwathmey, to demonstrate what the return is? You have simply shown a certain table of divisions used between the carriers (Rec., 398).

Mr. Gwathmey: We have shown just how much the Atlantic Coast Line, for example, is able to get per ton per mile on the traffic for its haul, assuming that it is impossible to divide it in such a way as to allow the other carriers a fair basis of division (Rec., 398).

Exam. Waters: What is before us, the evidence is in, it is for the Commission to give it such weight as it thinks proper (Rec., 398).

Mr. Cotterill: I was only calling attention to the fact that my silence might not be taken to indicate a waiver of the original objection that I made (Rec., 398).

For the purposes of this case, the Atlantic Coast Line made a rerating of the tonnage of these commodities originating from points on its line, showing the present revenue, the revenue under the scale proposed by the carriers, and the revenues if the Georgia Public Service Commission's scale were adopted. It is covered by my Exhibit 72 (Rec., 399).

Defendants' Exhibit 72 was received.

Mr. Doss: This statement shows the number of cars of sand, gravel and crushed stone, the total weight thereof, moving from points on the Atlantic Coast Line Railroad except points on the Atlantic Coast Line in Florida during the months of March, June and September, 1924 and 1925. The exhibit shows the distances, and separates the hauls as between single line and joint line; it shows the present rates and revenue, and also the rates and revenue that would be received on the basis of the carriers' proposed scales, and on the basis of the scales prescribed by the Georgia Public

Service Commission. This exhibit embraces 9,060 cars. I direct particular attention to the recapitulation shown [fol. 135] on page 17 of the exhibit. Now, some of these cars moved into or between points usually considered within the Pocahontas region, and for the purpose of getting the proper idea as to the level of these rates in the south, I have deducted the movement into the Pocahontas region, also have deducted that movement which occurred intrastate in Georgia, and it will be seen that out of traffic that paid $358,027.08, if the carriers' proposed scale instead of the present rates had been applied, our revenue would have been increased only $3,625.84, or a percentage of 1.01 increase. Now, had the Georgia Commission's scale been applied to this traffic, the reduction would have been $54,602.50, or 15.3 per cent (Rec., 400).

This exhibit does not cover all of the movements of these commodities in which the Atlantic Coast Line actually participates. It covers only the cars which originated on the Atlantic Coast Line. In my judgment, the showing would have been equally as disastrous to us had it included traffic originating on points on other lines. To a very great extent our joint haul rates, and by that I mean the rates which apply on cars which originate on other lines, are, except possibly in North Carolina, where we have a joint line scale on a basis which is higher than our proposed scale, even intrastate in South Carolina, and in Virginia and Alabama, the joint rates are on combination, and had that traffic, had it been possible to include that traffic, I feel certain that even the carriers' proposed scale would have shown a reduction in our present revenues, certainly it would have shown a reduction by using the Georgia Public Service Commission's scale. And the importance of this matter to the Atlantic Coast Line can readily be seen when it is remembered, as I have previously testified, that our revenues on these commodities in a year amount to $5,000,000.00, that a 15 per cent reduction is a right considerable loss (Rec., 401).

The exhibit shows the intrastate movement in Georgia, but for the purposes of the recapitulation, that tonnage has been deducted from the total tonnage (Rec., 401).

[fol. 136] The difference in total revenues that I gave reflects as to the joint line traffic the amount of all the car-

riers participating, not simply the Atlantic Coast Line's proportion (Rec., 402).

But the joint line traffic shown in this exhibit is only that originating on the Atlantic Coast Line and going to points on the lines of each of our connections. It does not include joint line traffic moving from points on other lines to points on the Coast Line (Rec., 402).

The C. & W. C. Railway was not treated as part of the Coast Line for the purpose of this exhibit (Rec., 402).

My Exhibits 73 to 76 are intended to show how the rates which the carriers are proposing in this case, as well as the rates as they would be under the Georgia Public Service Commission's scale, compare with prevailing rates on these same commodities in eastern trunk line territory. We inquired of the eastern roads as to their movements and consuming points, and these exhibits were prepared from the information which they furnished in response to that inquiry (Rec., 402).

Exhibit 73 shows the actual movement during the month of August, 1925 (Rec., 403).

Defendants' Exhibits 73, 74, 75 and 76 were received.

My Exhibits Nos. 77, 78 and 79 compare the rates here in issue with the rates in central freight association territory. My Exhibit No. 78 shows the rates in effect intrastate in Ohio, taken from the report of the Commission in Docket No. 14252 (Rec. 403).

Mr. Burchmore: I offer an objection to Exhibit 77, for the reason it purports to show present rates on sand, other than moulding, blast or glass sand, between points in central freight association territory, and the majority of the origin points shown are not producing points of the character of sand which is being considered in this proceeding, common building sand and gravel. They are producing points of moulding, glass and silica sand (Rec., 404).

[fol. 137] Mr. Gwathmey: Does your objection go to the correctness of this exhibit?

Mr. Burchmore: It certainly should be corrected because in that territory the rates on moulding, blasting and glass sand are on a higher basis than the common sand rates (Rec., 404).

Mr. Gwathmey: If that is a fact, it should be put in evidence in the usual way.

Mr. Doss: The rates shown in this exhibit do not apply on moulding, blast or glass sand. These origins and destinations were taken from a statement that was prepared during Federal control and show actual movements during the period July 1, 1918, to February 29, 1920. I do not know whether any of that movement was moulding sand or not. But, in any event, the rates shown here are not the rates on moulding sand, unless the rates on moulding sand happen to be the rates on common sand (Rec., 404).

Mr. Burchmore: In reference to the note on Exhibit No. 77, to the effect that this statement prepared during Federal control includes certain movements, I believe that the statement from which it is taken should be made available for purposes of cross-examination.

Mr. Doss: I can furnish the statement within a day or two.

Exam. Waters: The exhibit will be accepted and you will furnish the separate statement (Rec., 405).

Mr. Brooker: May I have the record show that this exhibit does not include shipments of sand from points in the Pittsburgh district, Newcastle, Jamestown, and Segerton, Pennsylvania; Akron, Massillon, East Liverpool, Fort Jefferson, Mechanicsburg, Gravel Pit, Marion, Orzack and Dayton, Ohio; Logansport, Toledo, Curran, Attica and Lafayette, Indiana; Lincoln and Pekin, Illinois, which are the largest producing points (Rec., 406).

Mr. Gwathmey: I object to that. I have no objection to his calling—

Exam. Waters: That fact which you have just brought [fol. 138] out in the proper cross examination to weaken the exhibit, what you are stating now you can state when you get on the stand (Rec., 406).

Mr. Brooker: My contention is that this does not cover building sand.

Exam. Waters: That is a matter for you to show by affirmative evidence later on if you can (Rec., 406).

Mr. Price: Before you leave Exhibit 78, the heading refers to sand and gravel, but you only show the sand rates.

Mr. Doss: I will be glad to correct that. What is intended to be shown is the scale prescribed by the Georgia Com-

mission on sand and clay gravel and not on washed gravel (Rec., 407).

I did not undertake to analyze the application of the rates in Ohio and central territory that are shown on page 71 of volume 85 of the Interstate Commerce Commission reports. I do not know what those rates apply on (Rec., 407).

Mr. Doss made a note of the alleged error to which Mr. Price called attention, of gravel rates purporting to be shown in Exhibit 78 (Rec., 408).

Exhibits Nos. 77, 78 and 79 were thereupon received (Rec., 409).

My Exhibit No. 80 compares the rates here in issue with the mileage scales applicable in the southwest (Rec., 409).

Defendants' Exhibit No. 80 was thereupon received.

The joint and single line scales shown under Column C, page 2 of the exhibit, apply generally throughout the southwest; they are the scales prescribed by the Interstate Commerce Commission in the Memphis-Southwestern Investigation, I. C. C. No. 9702, and they have also been shown in my Exhibit No. 126. In offering these exhibits, and dealing with the southwestern rates, it is not my purpose to suggest that the southwestern scales on these or other commodities are a proper measure for rates in the southeast. I have covered all the rates in this territory east of the Rocky Mountains, and just put the southwest in rather [fol. 139] than to have to explain why I did not put them in (Rec., 409).

I am simply undertaking to show that our proposed rates on sand and gravel are actually lower than the level of rates in the southwest fixed in the Memphis-Southwestern case. There is, of course, a movement of sand and gravel in the southwest (Rec., 410).

Mr. Gwathmey: We ask leave to withdraw the statement marked Exhibit 81, consisting merely of excerpts from the Commission's report in the C. & W. C. Railway Gravel Case, anticipating that the other side would object.

Mr. Burchmore: I have no objection to that.

Exam. Waters: It is well to have it in, as a matter of convenience (Rec., 410).

Mr. Gwathmey: If there is no objection, we will then let it stand as Exhibit No. 81.

Exhibit 81 was thereupon received (Rec., 410).

The remainder of my exhibits to and including No. 126 simply compare the rates proposed by the carriers with various rates in various parts of the country that have been prescribed and approved by the Interstate Commerce Commission. My Exhibits Nos. 83 to 88, inclusive, involve rates within southern territory. I particularly call attention to Exhibit No. 83, covering a very recent decision involving rates on crushed stone from Columbia, South Carolina, to stations on the Washington & Vandemere Railroad in North Carolina (Rec., 411).

Defendants' Exhibits Nos. 82 to 126 were received.

Mr. Gwathmey: With the filing of these exhibits, the testimony of Mr. Doss is concluded, excepting as to certain matters relating to the Florida situation for which he will be recalled later. I merely make a formal tender of the exhibits that have been offered, and ask that they be received subject to such objections as may have been sustained during the course of the hearing.

Cross-examination:

[fol. 140] I have not calculated the percentage increase which our proposal would make on traffic moving in Georgia, but it is easily calculated as the figures are shown on Exhibit 72 (Rec., 412).

Mr. Watkins: I have calculated them, omitting Jacksonville from it, and that is practically the same percentage, that is, 27.5 per cent you are proposing to make on this Georgia traffic (Rec., 412).

Mr. Doss: This gives me an opportunity to explain that the revenues shown on this Georgia intrastate traffic were not in all cases the rates that applied at the time the shipments moved. We re-rated the tonnage to get the present revenue by using the present rates and not the rates that were in effect prior to April 1, 1925 (Rec., 413).

In the state of Georgia, the Atlantic Coast Line originates some sand at a point called Williams and at a point

called Saffold, Georgia. They are right important shipping points, but not large ones as compared with the Montgomery district or the Petersburg district. As to this line, the tonnage of these products which we originate in Georgia is comparatively small in relation to our tonnage originating elsewhere (Rec., 413).

Prior to April 1, 1925, we applied the then existing mileage scale applicable in Georgia on our intrastate tonnage in Georgia and there is a comparison of that scale shown in my Exhibit 35. As to whether or not the Georgia Commission decision made an increase or reduction, would depend on the distance it had moved and whether or not for that distance there was an increase or a reduction. As to the intrastate Georgia tonnage originated by the Atlantic Coast Line, the previous existing mileage scale was assessed (Rec., 414).

Our tonnage of sand, gravel and stone in the Carolinas and Virginia is probably greater than the tonnage orig- [fol. 141] inated at other stations on our line, although there is a very considerable amount of that traffic that originates on our line in Florida. I haven't compared the two, but they both are considerable, and I wouldn't like to hazard a guess as to which one was the largest (Rec., 414).

The movements in the Virginia and Carolina areas have been occurring mainly under mileage scales and the exhibits will show that very largely these rates which were assessed are on our proposed scale. We have made effective on intrastate traffic in the Carolina-Virginia area the scale which we are here proposing (Rec., 413).

The scale we are here proposing is very nearly the same as the single line scale in North Carolina. Our proposed scale, where it differs, is usually a little higher than the North Carolina intrastate scale (Rec., 415).

There is very little difference between the scales that are applicable in the Carolinas and Virginia, and those now applicable in Alabama, and those which prior to April 1, 1925, were applicable in Georgia. There was not so very much difference between them and, of course, since the Georgia Commission's scale has been reduced April 1, 1925, it is the lowest one anywhere (Rec., 416).

The scale rate level in the Carolina area is higher than it is in Georgia today and it is just about the same as the intrastate level in Alabama (Rec., 416).

In the Carolina area, the mileage scales have been more or less closely adhered to in the actual charges (Rec., 416).

The movement of these commodities to points on the Coast Line in the southeast, and I mean the southeast as against the Carolinas, has been and is now under rates which are on our proposed scale; they are not published as mileage scales, but the specific rates that are published are on our proposed scale (Rec., 417).

[fol. 142] The great preponderance of the movements of these commodities, other than in Carolina territory, is covered by specific commodity rates that bear no relation to, and are very much less than the current mileage scales, except perhaps to our line, and except, of course, as to rates which are in effect from sand and gravel producing points to Atlanta, Birmingham and the intermediate points. I think they are the principal markets in that territory (Rec., 417).

The situation on the Atlantic Coast Line in South Georgia is no different from that on other South Georgia lines, as illustrated in my exhibits; the rates on sand and gravel from the Montgomery district, and on slag from the Birmingham district, and on sand and gravel from the C. & W. C. pits to practically all of the South Georgia territory are on the basis of the carriers' proposed scale; our situation in that respect, and by our I mean the Atlantic Coast Line, is no different from the Seaboard and the other lines in that section. The special commodity rates, and by that I mean those that are below the mileage scales, are used in North Carolina, Atlanta and Birmingham, but not in our section (Rec., 418).

I have not the data from which a conclusion may be drawn as to whether it would increase the total compensation of the carriers for the movement of this traffic within Georgia if the Georgia Commission's scale were substituted for the specific rates formerly in effect in Georgia (Rec., 418).

The effect of this proposed scale of the carriers on the total intrastate tonnage in Georgia was not given any particular consideration by the carriers at the time it was devised; we did consider the effect that the scale would have in a general way on our revenues in the territory as a whole (Rec., 418).

Until the revision within Georgia, which is involved in the present complaint of the carriers, the mileage scales [fol. 143] previously effective in Georgia were not literally adhered to in all cases; they were generally to points on the Atlantic Coast Line. The other carriers did not always adhere to the scale (Rec., 419).

The comparison of the scale prescribed by the Georgia Commission and such scale as previously existed in Georgia, does not demonstrate the actual effect of the new scale of the Georgia Commission as applied to the movement of tonnage. It would not do that, where you have a rate lower than the old scale, and it is brought up or down to the new scale (Rec., 419).

"Q. Now, while it may be that as applied to one carrier, namely the Coast Line, for reasons not now important to be inquired into, you did charge the previously existing Georgia Commission's scale on such small intrastate tonnage as is originated in Georgia, may it not have been the consequence of the Georgia Commission's revision that as applied to the total sum of revenue obtained by the carriers for the intrastate movement of this traffic in that state, such compensation of the carriers was increased and not reduced?"

"A. I don't know" (Rec., 420).

The complaint to the Commission, so far as we were concerned, was filed for the Atlantic Coast Line Railroad, and we tested the effect of the Georgia Commission's scale on our revenue. I have no information as to the effect of the Georgia Commission's new scale on the total revenue in Georgia, but the Coast Line was not only affected as to that traffic which it originates, it was more particularly affected by that traffic which it delivers, and which is now originating in Georgia under these low rates, whereas, before we handled it through on a combination basis from the Georgia origins, or we handled it from the shipping points on our own line located in other states (Rec., 421).

I have indicated that it was our purpose, where we are not now applying our proposed scale, to apply it or make an effort to have it apply throughout the states in which we operate, with the exception of Florida. We do not think

[fol. 144] it would be proper to apply anything lower than this scale throughout the south (Rec., 431).

There is a scale in North Carolina applicable on clay gravel, for municipal, county or state use, and at the time it was established, it was lower than the so-called commercial scale. But with the readjustment of the commercial scale, it is about the same as that old municipal clay gravel scale (Rec., 422).

The municipal rates that are applicable intrastate in North Carolina were published under an order of the North Carolina Commission. The only other state in which we have municipal rates is Florida, and I have explained the origin of those rates. At the time they were established, they were in the nature of arbitrary rates, in that representatives of the carriers arranged for their establishment with the representatives of the Florida Commission. We have since tried to get them out, without success (Rec., 422).

As to whether the scale which the carriers here propose is intended to be substituted for the scales of rates now limited to municipal use, the only municipal rates on the Atlantic Coast Line are those in North Carolina and those in Florida. Those in North Carolina are not of any importance. They apply only for single line hauls and there is no clay gravel on the Atlantic Coast Line in North Carolina. If the traffic originates in North Carolina on some other railroad, the commercial joint line scale of the North Carolina Commission would yield a lower rate than the totals of the separate factors under the municipal scale (Rec., 424).

Furthermore, the commercial scale in North Carolina is about the same as the old intrastate municipal scale which is therefore practically obsolete. Now, as to Florida, we would be glad enough to substitute the proposed scale for the municipal rates if they would let us, and it would be our purpose to try to get them to let us do it (Rec., 424).

[fol. 145] I do not recall that any particular consideration was given to the municipal rates in the conferences of the carriers which I attended, or that their cancellation was considered as one of the elements. I do not recall that it was discussed (Rec., 425).

Mr. Cotterill inquired whether succeeding witnesses for other lines would likewise record the consequences of traffic

tests. Neither the witness nor Mr. Gwathmey could answer the inquiry (Rec., 425).

By Mr. Cotterill:

Q. Mr. Doss, was the filing of the traffic test by you intended in any manner by you to be understood as suggesting that it is illustrative of the revenue consequences of your proposal as applied to the Southern territory as a whole? (Rec., 426.)

A. No sir.

Q. Was it intended by you to be suggestive of the revenue consequences as applied to other important lines of railroad?

A. Well, I have more particularly in mind in the preparation of this exhibit to show that traffic was moving freely within this territory on a basis of rates which is substantially the same as that which is being proposed by us. I think largely that exhibit as showing the result of the application of the scales to the Coast Line movement will be true as to the traffic of other lines; that is, of course, more particularly true as to the Carolinas than it is with Georgia and Alabama, particularly the northern portions of those latter states (Rec., 427).

I make no claim that the test shown by my Exhibit No. 72 would yield the same result if all the movements in the south were tested in the same way (Rec., 427).

By Mr. Cotterill:

Q. Speaking now not of the measure of either your scale or the Georgia Commission's scale in the sense of its revenue producing qualities, comparison of your scale with [fol. 146] that of the Georgia Commission indicates that according to the studies of the carriers, the progression of the Georgia Commission's scale is not in your judgment proper, is that a fair statement? (Rec., 427.)

A. I don't think it progresses rapidly enough or starts from a sufficiently high plane (Rec., 427).

Q. Well, in a comparison of the two, the Georgia Commission's scale and yours, it is observed that while as a whole your scale is higher, yet in addition to that the progression would be different, that is true, it is not? (Rec., 427.)

A. There is not the same progression, not the same rate of progression (Rec., 427).

Q. Your scale would increase the shorter distance rates of the Georgia Commission more than it would the longer distance rates, would it not?

A. Probably in percentage, but not necessarily in cents per ton (Rec., 427).

I have filed a number of exhibits containing excerpts from previous decisions of the Commission in cases involving a number of these commodities in southern territory, but I do not know of any previous proceeding involving the rate structure as a whole in southern territory (Rec., 428).

Q. Among the elements which you enumerated as entering into your scale, you stated that thought was given to certain studies of the Southern Freight Association or its predecessor in which it drew together the various scales prevailing in the south and their averages, did you not? (Rec., 429.)

A. Yes sir.

Q. Does the scale which the carriers are here proposing [fol. 147] correspond closely to such average?

A. Well, there is a comparison made of the averages with the scale here proposed in one of my exhibits (Rec., 429).

Q. I was coming to the point as to the difference between you on the matter of rectifying awkward rate jumps and the evidence as a rate level your scale would approximate the averages as thus produced by that committee? (Rec., 429.)

A. No sir, the scale is not based on taking the averages that merely removed the discrepancies or irregular jumps (Rec., 429).

Q. Well, if not based upon it, does it approximate it when those rectifications be made? (Rec., 429.)

A. Well, the exhibits I filed show.

Q. I will not ask you then to refer to that.

A. Let me explain that we are suggesting here on scale to apply on all of these commodities (Rec., 429).

Q. Yes.

A. The study made by the Southern Freight Committee was separate as to each, sand, gravel and stone and chert and the rest of them; my exhibit only undertakes to show

the averages on the more important ones, and obviously where they differ, our scales could not have been approximately the same as those scales, because we are suggesting one scale, whereas the averages were different on each commodity. We did give weight to that in arriving at our scale, but we did not follow those averages as to either commodity (Rec., 430).

Mr. Burchmore: I offer an objection, which you may wish to consider during the recess, to Exhibits 85 to 125, inclusive, on the ground that they do not comply with paragraph C of Rule 13 of the Rules of Practice, in that they purport to be statements of rates in other territories, and there is no tariff reference to support them (Rec., 430).

[fol. 148] After the noon recess, Mr. Burchmore renewed the objection.

Exam. Waters: In looking over these exhibits rather hurriedly, they appear to be citations of rates found reasonable or prescribed by the Commission in numerous cases which are cited. If there are any existing rates shown and no tariff references given, of course that ought to be done.

Mr. Burchmore: Exhibit No. 90 illustrates my objection. There is a note stating "Rates prescribed by the Interstate Commerce Commission are as of November 13, 1919." They have been increased and respective changes under Ex Parte 74 and Docket No. 13293 (Rec., 431).

I am sure that you will find that the rate shown of $1.51 is not the rate dealt with in the Commission's decision. It is a figure that the witness has converted by a process that he stated, and the present rate, according to the tariff, would probably be a different figure. This $1.51 is the present rate according to the note at the bottom of the exhibit (Rec., 432).

Mr. Gwathmey: If there is any uncertainty, I will say that the purpose of the exhibits was largely as a matter of convenience to the parties to show the level of the rates which the Commission has found reasonable on the commodity in these various cases. For the purpose of the exhibits, those rates were plussed and reduced according to the general percentage changes. They are not offered for the purpose of showing what the present rates may be between any

particular points. They are intended simply to show what the Commission in the past has held to be reasonable in comparison with the charge that we are now proposing (Rec., 432).

Mr. Brooker: The rates in eastern trunk line territory and in central freight association territory were not reduced 10 per cent under this docket which they have referred to. They had previously to that received a reduction of at least 18 per cent in 1921. In other words, the rates in that territory were put on a basis of 115 per cent of the rates in [fol. 149] effect pior to August 26, 1920. So, therefore, the 10 per cent reduction would not apply to any of those rates, and in addition to that, there have been numerous other changes in the rates since that time (Rec., 433).

Exam. Waters: As I understand it, Mr. Gwathmey does not intend to say that these exhibits show the existing rates between the points today and it is just a matter of computation by applying the general increases and reductions (Rec., 433).

Mr. Burchmore: I point out that the rates that are shown are not the rates that the Commission considered at all.

Exam. Waters: Of course, we can't go into that. It seems to me that would be a matter for argument (Rec., 434).

Mr. Burchmore: Exhibit No. 90 does not show the rate that was before the Commission, does it?

Mr. Doss: It does not, it shows exactly what was done. The exhibit states that the rate is not the figure shown in the record, but that it reflects the general rate changes. I do not know whether $1.51 is the existing rate today between Nichols and Athens (Rec., 435).

Exam. Waters: In other words, to know what was considered by the Commission in that case, you will have to get the report. We will accept the exhibits with those weaknesses in them (Rec., 435).

Exhibit 71 shows that the rate is $1.40 from Cooks, Alabama, to Bainbridge, Georgia, out of which the Atlantic Coast Line receives $1.15, leaving 25 cents for its connections. That was and is the rate and the division. If the Georgia Commission's scale takes effect, the rate becomes $1.20, and this exhibit shows that if such rate was divided on the basis fixed by the Georgia Public Service Commis-

sion, 90 cents would be the division to the Atlantic Coast Line and 30 cents to its connections (Rec., 436).

[fol. 150] By Mr. Burchmore:

Q. Is there any reason why it should be so divided that the divisions of your connections will be increased although the rate is reduced? (Rec., 436).

A. Well, under the Georgia Commission's basis for dividing the rates, that would be the result (Rec., 436).

Q. Is there any other reason than that that you have just given?

A. Well, I don't know that I understand what you mean. This exhibit shows the present rates and divisions, and what the rate and divisions would be on the basis of the Georgia Commission's order. Now, presumably the initial line would require all that the Georgia Commission allowed it, and that would leave us only 90 cents, paying 5.1 mills per ton per mile (Rec., 436).

On Exhibit No. 70, from Norris, Georgia, to Jesup, Georgia, when the rate was reduced from $1.67 to $1.30, the exhibit shows the division of the Atlantic Coast Line was reduced but the division of its connection was increased, namely, from 67 to 75 cents. This was because prior to the time the Georgia Commission fixed these rates, we could fix any rate and divisions that were satisfactory to us and to our connections, so long as we did not go above what was then the maximum scale of the Georgia Commission, but when the Georgia Commission took the matter in hand and fixed joint rates, it fixed joint divisions: that is what we are complaining about, that those joint divisions which it fixed do not allow us what we consider to be proper proportions (Rec., 437).

By Mr. Burchmore:

Q. Will you look at the exhibit while I call your attention to a few illustrations: To Jesup, Georgia, the rate was $1.67, it is now $1.30; to Camilla the rate was $1.67 and is now $1.30; the divisions to Jesup were $1.00 to the Atlantic Coast Line and 67 cents to its connections and are now 55 cents to the Coast Line and 75 cents to its connections; yet to Camilla it was 50 cents to the Coast Line and is now 30

cents, it was $1.17 to its connections, and is now $1.00; that [fol. 151] looks like a rather mixed up mess over divisions (Rec., 438).

A. I agree with you thoroughly, I think it is absolutely absurd, but we are not responsible for it.

Q. All right, now going back to the exhibit.

A. That is what we are complaining about now (Rec., 438).

By Mr. Burchmore:

Q. Turn back to Exhibit No. 54, showing the lumber subcommittee scale as compared with the stone scale, and state whether or not it is true that out of these through lumber rates for joint hauls the originating line for very short hauls is allowed divisions of 6, 8 and 10 cents per 100 pounds? (Rec., 438.)

A. Not to my knowledge, we can't allow them and don't allow them.

Q. Do you know whether the basis of divisions is much more favorable to the origin lines out of these lumber rates than it is out of any of your stone rates and sand rates?

A. Not under these rates, I don't so understand, the rates are pretty tolerably low, and I wouldn't consider that any of the lines get proportions that are excessive (Rec., 438).

Q. I didn't ask you that, I asked you about the fact.

A. You probably misunderstand that this scale that is shown in here under the heading "Georgia Scale" is a scale that is applied between points on trunk line railroads, it is not devised to apply from short line points (Rec., 438).

Our lumber scale shown on Exhibit 54 is not devised to apply from sawmills located on short line railroads. It is a scale that is to be applied between points of origin and destination, both of which are on trunk lines (Rec., 439).

In connection with Exhibit 55, I did not give any particular attention to decisions of the Commission dealing with joint line and single line rates on such commodities as cement and oil and lumber. I merely took the reports of [fol. 152] the Commission and undertook to find where the Commission had fixed or approved mileage scales on various commodities and had shown a differential for joint

over single lines. I do not recall seeing any reports where they did not fix joint line differentials. I did not participate in the cement case (Rec., 440).

The proposed adjustment of the rates on brick in the south which was considered by the Interstate Commerce Commission in I. & S. Docket No. 1885, was made, that is, the rates were published, after the carriers had submitted their proposed scale to the Georgia and Alabama Commissions. We had thought it proper to observe joint line rates on brick made in substantially the same manner as our proposed rates on sand, gravel and stone. But a number of difficulties arose and we had numerous conferences with the shippers in an effort to compose the situation. Early in the proceedings, it seemed appropriate and necessary to observe rather large groupings of origins, particularly to destinations 150 miles and more away. In working out those rates and trying to make the rates conform to the amended fourth section, and in an effort to keep open all competing routes, it was almost impossible to work out rates that would preserve those groupings and keep all routes open with higher scales for joint hauls than for single line hauls. We were under the strongest kind of pressure from the shippers to suggest a lower scale, both single and joint line, and somewhat in the nature of a concession on the part of the carriers, we merged the two scales at about 80 miles. We did not think that the rates that we accept on brick for joint line hauls with that small differential are the proper level of those rates (Rec., 442).

The Interstate Commerce Commission adopted this basis of 20 cents per ton for a joint line differential which disappeared at 80 miles, but prescribed in its report in I. & S. No. 1885, somewhat lower rates for short hauls than the carriers had published, and somewhat higher rates for the longer hauls (Rec., 443).

[fol. 153] In Docket 9702, the Interstate Commerce Commission fixed joint line differentials on sand and gravel which ran from 10 cents to 30 cents a ton. It was a peculiar sort of scale in that the joint line differential was 10 cents for 10 miles and got up as high as 30 cents for some of the longer distances (Rec., 443).

Commercial and competitive conditions entered into the compromise of the brick situation, as well as the fourth

section, but if it had been possible to observe the fourth section, I don't think that the carriers would have been willing to suggest any removal of the original differential, joint line over single line hauls (Rec., 443).

By Mr. Price:

Q. Now, what is there, Mr. Doss, about the movement of sand and gravel, etc., that will enable you to overcome these fourth section difficulties that you could not overcome with your brick situation? (Rec., 443.)

A. Well, we haven't the same situation as we have on brick, first, because any scale that we have ever seen that moves sand and gravel is so low that you cannot apply the single line scale for a joint line service, the level of the rate is so much lower than on brick that you just simply start off with what is practically a minimum rate for a single line haul, there is no margin in there in which to permit of circuitous lines meeting short line rates. There are a number of cases where we can't meet our competitors' rates on sand and gravel, whereas, there are very few on a commodity like brick. I wanted to just sort of illustrate some of the things we had on brick, which I don't think would arise on the sand and gravel. One particular case on the brick was where from the Birmingham district, the producing points in quite a large area had been thrown in one group, and there was a place on the Louisville & Nashville Railroad, I believe Sibleyville, that was 25 or 30 miles out of Birmingham, but in that grouping it [fol. 154] was given the Birmingham rate for distances 150 miles or more away from Birmingham. Now, take Athens, Georgia, the rate from Sibleyville was made on the single line scale of the Seaboard Air Line from Birmingham to Athens, which is the short line. Now, take from Chattanooga, the single line distance of the Southern Railway is considerably in excess of the short two-line haul of the N. C. & St. L. Railway and the Seaboard Air Line, yet under this basis we had worked out, you would have had a lower rate from Sibleyville via the single line scale of the Seaboard from Birmingham, than you would have had with the joint haul from Chattanooga to Athens. And there were just literally thousands of those situations which caused us to remove the differentials on joint hauls.

Now, in the case of sand and gravel, of course, you would have that competition probably, but you haven't that margin in which you can afford to create a parity in the situations by meeting the lowest rate from all the producing points (Rec., 445).

At the present time, the pits in the Montgomery district to points on the Coast Line, for example, 150 miles or more away from Montgomery, are on a group basis, using the single line scale from Montgomery proper, we are proposing to restrict that so that the grouping will only apply to pits within 18 miles of Montgomery. That is rather an expensive sort of a proposition for some of the railroads that try to carry out that basis, we don't feel for example that we ought to have to take a pit on somebody else's railroad, and put that pit in competition with a pit on our own line at our expense. That is the way we look at it (Rec., 445).

But we are doing that. The greater part of the business that we handle out of the Montgomery district originates within the Montgomery switching limits. There is very little, if any, movement from Chehaw, now. There is a movement from both Cooks and pits on the Louisville & Nashville Railroad but that movement is not as great as the movement from the points located in the Montgomery [fol. 155] switching limits (Rec., 446).

I do not have in mind particularly Cooks, but other pits on the Western Railway of Alabama. I know there has been a movement from Cooks in days gone by (Rec., 447).

There is a movement from pits on the Western Railway of Alabama in the Montgomery district in connection with the Atlantic Coast Line on our single line rates. The pits on the Western Railway of Alabama and the Louisville & Nashville Railroad in the Montgomery district are all grouped. That group covers Chehaw which is 39 miles this side of Montgomery. The rates from Chehaw apply back though Montgomery and over the Atlantic Coast Line into Georgia. If we applied the joint line scale we would certainly have a different situation. But where we observe this grouping, the distance would be 150 miles and under the Georgia Commission's scale there would not be any difference between the single and joint line for the same distance (Rec., 448).

Of course, adding the 7 or 9 or 10 miles to the Montgomery distance would throw it into another and probably higher rated group. But as I have explained, we propose to restrict that area to points within 15 miles of Montgomery, which would exclude Chehaw and would increase a good many of the rates from Chehaw (Rec., 448).

The carriers' proposed scale was constructed in 1921. That scale has been subjected to the 10 per cent reduction. I would not say that has produced a very irregular scale or rate of progression. Taking the rates originally submitted, if the old figure ended in naught, you could get an exact 10 per cent reduction. Where the old figure ended in 5, under the rules of disposition of fractions, which was observed, you would get instead of five-tenths, which would just disappear on that 5 cent figure, for instance, if it was $1.95, you wouldn't take off 19.5 cents, you would [fol. 156] take off only 19 cents, that made the scale where it had progressed at the rate of 5 cents for a mileage block, the new rate would progress only 3, it would be 5 cents, and the next time 4 (Rec., 449).

Q. It is irregular?

A. Yes, that is irregularity.

Q. If you were called upon to construct a scale today, you would not use the rate of progression as is proposed in your scale now, would you?

A. No, and the only reason we have suggested a new scale is due to the fact that in the interim between the time this scale was thought of and July 1, 1922, we had published a number, a great number of specific rates, and all of those rates would have then been off the basis (Rec., 449.)

Of course, that was not only true of sand and gravel, but it was true of all other commodities where we had revised specific rates to reflect the scales submitted to the Georgia and Alabama Commissions. We decided the best thing to do would then be to let the scales stand at least until they were passed upon and fixed as final figures (Rec., 449).

At the time when this scale was constructed, I do not recall that we gave any particular consideration to the financial condition of the carriers. We, of course, did not want to throw any money away just because we were called

upon to submit a mileage scale to the Commission and some of us have been criticised for having suggested the rates that brought that about (Rec., 450).

Q. You certainly did not consider that the rates proposed to the Georgia Commission at that time would lose you any revenue at that time, or you would not have proposed them, would you?

A. Well, I can't say that that was the case, because we knew that we were proposing scales then to the Georgia Commission which if applied over our line interstate and intrastate in other states, would in a good many cases [fol. 157] cost us a whole lot of money; I think there is no question but what this sand and gravel scale has reduced our revenues in other places.

Q. Do you recall whether or not the financial condition of the Atlantic Coast Line Railroad was better in 1921 than it was in 1925, February, 1925? (Rec., 451.)

A. I haven't made any particular study, and all that I know in a general way is that we are handling more business and are better off financially than we were then (Rec., 451).

Q. Your net is better off?

A. Yes sir.

Q. Now, Mr. Doss, the Atlantic Coast Line is the only trunk line that has filed this complaint against the Georgia rates? (Rec., 451.)

A. That is correct.

Q. And there were four or five of the short lines that joined in this complaint?

A. Yes sir (Rec., 451).

Q. Now, do you think it would be practicable, Dr. Doss, for the Georgia Commission in dealing with this general revision which it has had under way since 1921, to select the Atlantic Coast Line and these eight short lines, and give them special treatment, rather than to look at the situation as a whole? (Rec., 451.)

A. Well, I think that the scale which we proposed to the Georgia Commission for application via all the lines in the State of Georgia would of itself have required you to have considered the lines as a whole, but we think that our situation should have been considered along with the

others, as no doubt it was (Rec., 451-452).

Q. And the other lines did not take the same exceptions or to the extent that you did to the rates fixed by the Georgia Commission?

[fol. 158] A. Well, they did not join in this petition (Rec., 452).

I was not present nor was the Atlantic Coast Line represented or invited to attend at the conference referred to in the testimony yesterday by the Rate Expert of the Alabama Commission. I do not know of any other line that was represented. The Atlantic Coast Line has something like 175 miles of railroad in Alabama. So far as I know, there was no movement on the part of the Alabama Commission to put these rates into effect in Alabama; on the contrary, the petition which we have pending in Alabama covering the general revision of all the rates has been indefinitely postponed as to sand, gravel, and stone (Rec., 453).

Mr. Cotterill: I think in justice to the Commission, members of which were compelled to return to Montgomery for a day or so, it ought to be recalled that the purpose of the postponement was specifically declared to be in order to solicit from this Commission a more comprehensive determination so that they might consider its adoption in Alabama (Rec. 453-4).

Commissioner Lewis: That is the record (Rec., 454).

There is no complaint by the carriers against the Alabama Commission pending before the Interstate Commerce Commission in regard to sand and gravel rates (Rec., 454).

Mr. Gwathmey: As counsel I will say my understanding is it would not; in other words, I don't understand that there is any thirteenth section proceeding here which involves intrastate rates in the state of Alabama (Rec., 454).

Some of the scales referred to on my exhibits 48, 49 and 50, are moving a very important tonnage today. I refer to the mileage scale that is applicable interstate between points on the Atlantic Coast Line in Virginia and North and South Carolina. We do publish, in some cases, specific rates, but they are in most instances on the mileage scale which is shown in this exhibit (Rec., 455).

[fol. 159] My Exhibit No. 70 shows the rates from Norris, Georgia, to Tifton. That mileage was constructed by the short line, which is through Macon. That would be true of Valdosta, and Jesup. We wouldn't attempt to handle business from Norris to Jesup through Albany under the Georgia Commission rates if we could get out of it. We did handle traffic that way under our former rates. I have not checked to see that we actually handled any business from Norris to Jesup through Albany. But we did put in a line of rates for the Norris pit lower than the combination basis in effect prior to April 1st, and we did handle some business down there (Rec., 456).

Our distance from Albany to Jesup is 152 miles. That makes 330 miles from Norris to Jesup, as compared with 219 miles by the short-line or an out of line haul of 111 miles (Rec., 456).

I don't think we would permit our soliciting people to solicit business on that character even under our own rates. Of course, it would all depend on what we got out of it. We required a proportion of $1.00 per ton from our connections on the business which we did handle, if we handled anything. It would leave 67 cents for the 178 miles from Norris to Albany under our rates (Rec., 456).

I don't think they would ever have forwarded any business to Jesup via Albany; the Georgia Railroad undoubtedly delivered it to the Southern Railway at Macon (Rec., 456).

The Georgia Commission's order would not require the Atlantic Coast Line to accept business originating at Norris, Georgia, for Jesup, Georgia, on a rate which the Commission has fixed through Macon. But take Blackshear, Georgia, for example, which would be within that same mileage group, we would have to accept it wherever it was tendered to us. Blackshear is 10 miles from Jesup, as I recall, or 320 miles from Norris to Blackshear through [fol. 160] Albany, as against 220 miles through Jesup. We would not be required by the Georgia Commission to accept this business at Albany. I mean that under the Georgia Commission's Freight Rule No. 33, which pertains to routing, the Albany route would not be required to handle it unless it so elected. But, in the absence of any publication to the contrary, I understand the Georgia Railroad today could forward Jesup business through Macon and Albany,

and we would have to accept these proportions on it (Rec., 458).

I do not understand that in the Georgia Commission's order of February 25, 1925, as promulgated, we could fail to apply the rates via any of the routes that handled it voluntarily, without a tariff publication to the contrary (Rec., 458).

I think your Rule No. 33 was more applicable prior to the establishment of these joint line hauls than it is today, as I recall a long line could meet a short line's rates to those long joint haul points by publication, if it didn't publish the rates it couldn't meet the short line's rates, but as we have issued these through rates, they would apply, as I see it, via any or all routes that undertook to handle the business (Rec., 458).

The carriers voluntarily made that publication, not in compliance with any order of the Georgia Commission, but to have restricted it and made it nonapplicable via all these circuitous routes would have been an almost endless undertaking (Rec., 459).

Exam. Waters: I think we have pursued that line about far enough.

Mr. Price: I regretted to go so much in detail on it, but the statement was made this morning that these divisions were forced on the Georgia carriers, and we want to make it clear that they have not been forced on the Georgia carriers (Rec., 459).

[fol. 161] Referring to the first page of Exhibit 72, I believe there is a rate from Albany to Atlanta that was lower than the former Georgia Commission's scale. I do not recall just what that rate was, or whether it applied via the Coast Line. I do know that within the last thirty days our attention was called to the fact that we were soliciting that business under the present rate and we told them to stay off of it. It is my recollection that the rate from Albany to Atlanta is lower than the rate fixed by the Georgia Commission, I forgot the exact figure (Rec., 460).

If the 1924 intrastate rates had been used in these exhibits, there would have been a different showing in both cases (Rec., 460).

I do not know of any movement of crude clay or shale between points on the Atlantic Coast Line Railway in

Georgia. I do not know of any interstate movement into or out of Georgia (Rec., 460).

If there are no actual movements, there would not be any discrimination as to these particular commodities because of their being included in the Georgia scale. If they are omitted from the Georgia Commission's order, it will be satisfactory to me not to consider them in this case (Rec., 461).

Mr. Shepherd: I have been around here four or five days trying to find out whether these rates are under attack or not. I never heard of this case until last Saturday (Rec., 462).

Witness excused, but later recalled for further direct examination.

[fol. 162] ERNEST WILLIAMS testified, as follows:

I am with the Charleston & Western Carolina Railway and have been general freight and passenger agent since July 1, 1902 (Rec., 462).

I have prepared an exhibit to show the tonnage of sand and gravel from stations on the Charleston & Western Carolina Railway to points in the state of Georgia and how that movement has been affected since the Georgia Commission's order went into effect on April 1, 1925. This statement only covers clay gravel. There is practically no movement of sand. It shows the movement from pits in South Carolina on the C. & W. C. Railway between Augusta, Georgia, and Yemassee to points in Georgia, and the total revenue, for the years 1923, 1924 and 1925, in detail (Rec., 463).

Defendants' Exhibit No. 127 was received.

The summary of these sheets shows that in 1923 the tonnage was 110,672, the number of carloads averaged on 40 tons, was 2,767 cars; total revenue of $144,414.14 (Rec., 463).

In 1924, the tonnage was 81,601 tons, 2,040 carloads, total revenue of $120,453.46 (Rec., 463).

In 1925, the tonnage was 8,929, 223 carloads, total revenue of $11,526.34.

I want to state that the rates from C. & W. C. stations on clay gravel to Georgia points were revised under I. & S. Docket 1848, on November 27, 1923. The rates in Georgia intrastate were reduced effective April 1, 1925, and I have shown on the last sheet of that exhibit the movement from April 1 to December 1, 1923, 1924 and 1925; the movement in 1923 for that period being 103,956 tons, 2,599 cars, $137,505.93; for the same period of 1924, 66,755 tons, 1,669 cars, [fol. 163] total revenue $96,029.25; in 1925, 4,422 tons, 111 cars, total revenue $5,432.06. I would call attention to the fact that in the last three months of 1925, there was not a single carload of clay gravel moved off the C. & W. C. Railway to Georgia points (Rec., 464).

The movement shown on the last sheet of Exhibit 127 between April 1 and December 1, 1924, took place under rates which are on the scale that the carriers are now proposing in this case and as approved by the Commission in I. & S. Docket No. 1884 (Rec., 464).

Cross-examination:

The scale rates are applied from pits on our line to points in Georgia; the scale rates where we applied the single line scale to points on connections beyond as shown in that I. & S. Docket, and to all other points where we show a joint line scale, that is, the scale that was proposed to the Georgia Commission in 1921 less 10 per cent (Rec., 464).

Those are the rates which were dealt with by the Commission in the so-called C. & W. C. case. The rates under suspension in that proceeding were not in the nature of group rates, as between different origin points; as to the measure of the rates, they were materially advanced in some cases under the I. & S. Docket (Rec., 465).

Our road has 18 miles of line in Georgia. We have no intrastate movement in Georgia on our line (Rec., 465).

This decrease in our movement to Georgia points was displaced by some movement within Georgia (Rec., 466).

The Georgia Public Service Commission reduced their scale of rates much below the scale of rates approved by the Commission or the rates approved by the Commission in 1848, and that shut the shippers along our line out in Georgia, and the Highway Commission cancelled their

contracts which they had on account of the difference in the rates (Rec., 466).

[fol. 164] My information is that the tonnage we have lost is moving from Georgia points. The Georgia rates increased the tonnage and movement and revenue of the carriers between points in Georgia, at much less rates than applied from South Carolina to Georgia (Rec., 466).

I am showing that the Georgia rates discriminated against the interstate rates. I am not duplicating the testimony in regard to the rates because I thought that was unnecessary, but I am showing that the movement demonstrates that the rates put in by the Georgia Commission which are lower than the interstate rates have cut the interstate movement off entirely (Rec., 467).

It is true, so far as the tonnage goes, that the business lost by our line and pits located on our line went to some pits located in Georgia and that whatever carrier served that pit in Georgia got the new tonnage and the new revenue; but they got it at the lower rate than applied from South Carolina to Georgia (Rec., 467).

By Mr. Burchmore:

Q. I would like to ask whether it is not a fact that the tonnage was destroyed by the Interstate Commerce Commission's order in the C. & W. C. case? (Rec., 467).

A. I will have to let the statements speak for themselves, the rates fixed by the Interstate Commerce Commission or approved by the Interstate Commerce Commission went into effect on November 27, 1923; now, if you will look at the movement in 1924, you will find that that is not materially reduced, certainly nothing in line with the reduction in 1925, while it was slightly reduced, but we expected that because the same amount of money which made as many miles of road at one rate as it would at a little higher rate, and we expected a reduction, which shows here that the movement in 1923 was 110,672 tons, in 1924, it was 81,601 tons, while in 1925 the movement is only 8,929 tons, so the rates fixed by the Commission did not [fol. 165] affect the movement materially (Rec., 468).

Q. But from the stations where the rates were increased as the result of that order, wasn't the tonnage nearly annihilated?

A. No sir, all of the pits were on a group basis, so the same thing applies from all of them (Rec., 468).

I have been with the C. & W. C. Railway for a good many years and I think I am thoroughly familiar with the movement of this material from our stations to points in Georgia. I would not say that prior to 1923, we had a monopoly on this business. I have not had occasion to look the rates up to see whether there were anything but class rates in Georgia. It is true any order issued by the Georgia Commission would be directed against us, but having no movement in Georgia, I did not make a note of the Georgia rates (Rec., 469).

Witness excused.

[fol. 166] L. V. CRANE testified as follows:

I am assistant to the vice president in charge of traffic of the Southern Railway System lines, with headquarters at Washington, D. C. I have been in the traffic department of the Southern Railway System for more than fifteen years past (Rec., 470).

Mr. Crane's Exhibits 128 to 156, inclusive, were offered in evidence and received, subject to any objection to be made thereto (Rec., 470).

I will deal with the rates here involved from Chattanooga, Tennessee, to points on our lines and also, to some extent, with the intrastate adjustment in Georgia (Rec., 470).

The rates on sand and gravel from Chattanooga to points on our lines are predicated primarily on our general interstate mileage scale. There are some few exceptions to this basis to which I will later refer. The present general interstate mileage scale of the Southern Railway is the same as the scale previously referred to as the carriers' present proposed scale (Rec., 471).

The general interstate mileage scale of the Southern Railway System provides the same rates on crushed stone, slag, chert, sand and gravel, whether washed or unwashed. The scale has quite general application on interstate traffic between points on our lines, except where, for competitive reasons, rates on a lower basis are maintained (Rec., 471).

This scale was established effective July 1, 1922. Prior to that date the scales which we operated applied only for single line application. But in the revision of July 1, 1922, we established a scale for joint line application as well as for single line application (Rec., 471).

Prior to July 1, 1922, we maintained a single line scale of rates on crushed stone and slag which applied generally over the lines of the Southern Railway Company. At that time we also had in effect other interstate scales on sand and gravel which were generally on a higher level [fol. 167] than the scale applicable to crushed stone and slag. These interstate scales on sand and gravel as in effect prior to July 1, 1922, were not uniform, and different scales were applicable on different parts of our line (Rec., 472).

My Exhibit 128 is a statement showing the interstate mileage scales of the Southern Railway Company in effect prior to July 1, 1922, and the uniform interstate mileage scale which was made effective on that date.

Defendants' Exhibit 128 was received.

Mr. Crane: When this scale was first established it carried minimum weight marked capacity of car, but it was later revised to provide for minimum weight 90 per cent of marked capacity of car. The first scale shown on this exhibit is the scale of rates on crushed stone and slag which applied prior to July 1, 1922, on interstate traffic generally between points on the Southern Railway Company. The second scale of rates shown on this exhibit applicable on gravel, sand and slag applied generally to interstate traffic between points on the Southern Railway Company east of Atlanta, Georgia. This scale was first made effective on January 1, 1916, as a part of the general revision made under the Commission's decision in Fourth Section Violations in the Southeast, 30 I. C. C. 153. This scale has application between stations on our main line between Atlanta, Ga. and Lynchburg, Va. as well as on interstate traffic generally between points in North Carolina, South Carolina and in Virginia south of the main line of the Norfolk & Western Railway. The same scale prior to the increases under Ex Parte 74 also had application on our main line north of Lynchburg, Va., but under the Commission's decision in Ex Parte 74, the rates

between points north of Lynchburg were increased 40 per cent and the rates between points north of Lynchburg, on the one hand, and south of Lynchburg, on the other, were increased 33 and 1/3 per cent, whereas, the rates between points south of Lynchburg were increased 25 per cent. I have merely shown in these comparisions the scale that was increased 25 per cent under Ex Parte 74 and not the same scale which reflected the increase of 33 and 1/3 per cent or 40 per cent under Ex Parte 74 (Rec., 473).

[fol. 168] This scale of rates on gravel, sand and slag applicable between points on the Southern Railway Company east of Atlanta prior to July 1, 1922, closely approximated, although it was generally somewhat higher than the scale of rates on crushed stone and slag which applied generally over the Southern Railway Company prior to July 1, 1922 (Rec., 473).

The sand and gravel scale shown on the third column of this exhibit applied prior to July 1, 1922, between points on the Southern Railway Company west of Atlanta. This scale was on a higher basis than the scale which applied on the Southern Railway Company east of Atlanta. The scale had application prior to July 1, 1922, from Chattanooga, Tenn., to points on the Southern Railway Company between Chattanooga and Brunswick, Ga., including the Fort Valley and Columbus branches, except to a comparatively few competitive points where specific commodity rates on a lower basis were in effect (Rec., 474).

The fourth scale shown on this exhibit in effect prior to July 1, 1922, applied to interstate traffic between points on the Southern Railway Company east of Paint Rock, N. C. and Atlanta, Ga. on the one hand, and points on the Southern Railway west of Paint Rock and Atlanta, on the other (Rec. 474).

In 1921 we were urged by some of our shippers to make a revision in our interstate scales on this traffic. The matter was carefully considered by our company and also in conference with other carriers, with the result that we proceeded to make effective on July 1, 1922, our present interstate mileage scale of rates on the commodities here involved. This revision brought about a general lowering of the rates under our interstate mileage scales on these commodities (Rec., 474).

The revised scale which had been published to become effective on July 1, 1922, was immediately subjected to the general reduction of 10 per cent as result of the Commission's decision in Docket 13293 (Rec., 475).

[fol. 169] Our general interstate mileage scale now applies from Chattanooga, Tenn. to points on the Southern Railway System lines, including the Alabama Great Southern Railroad, New Orleans & Northeastern Railroad and Georgia, Southern & Florida Railway, except in a comparatively few instances where to certain competitive points rates on a lower basis are maintained. The general interstate mileage scale which we established on July 1, 1922, is the same scale which was later approved by the Commission in Sand & Gravel to the Southeast, 83 I. C. C. 436, involving the rates on sand and gravel from Charleston & Western Carolina stations to destinations in the southeast. This is the scale which we ask the Commission to approve as a reasonable maximum scale in these cases (Rec., 475).

There must, of course, be a mileage scale which may be used as a general measure for rates on these commodities. We ask only for the prescription of a maximum scale of rates, leaving to the carriers the right, whether or not it be availed of, to depart from the scale where, in their judgment, competitive conditions may justify such action and such course may be pursued without creating unlawful discriminations (Rec., 475).

There has been in the past and doubtless will be in the future situations that require particular treatment if the traffic is to move. It is impossible to state here to what extent or in what instances it may be necessary to depart from the maximum mileage scale. This is a question of which must be determined on its merits in the light of circumstances in each particular case. All we ask here is that the Commission find that our present general interstate mileage scale is not in excess of a reasonable maximum scale (Rec., 476).

In revising our scales on July 1, 1922, we adopted a scale for joint line application as well as a scale for single line application (Rec., 476).

[fol. 170] In my Exhibit No. 129 I have shown the differences in the joint line scale over the single line scale under our revised interstate scales as they were published effec-

tive July 1, 1922, without the 10 per cent reduction, and after the said scales had been subjected to the 10 per cent reduction (Rec., 476).

Defendants' Exhibit No. 129 was received.

Mr. Crane: The differences ranged from 30 cents to 10 cents, and they now range from 27 cents to 9 cents as result of the 10 per cent reduction. I might point out there that as the result or before the 10 per cent reduction applied, there was a steady progression in our scale, which was disturbed somewhat as the result of the 10 per cent reduction, but that is true of any scale which is subjected to percentage increases or reductions (Rec., 477).

Attention is directed to the fact that for distances 240 miles and over 220 miles, the differential was 25 cents and is now 23 cents, whereas, for the block of distances 260 miles and over 160 miles the joint line differential was 20 cents and is now 18 cents. The joint line differential for distances 240 miles and over 220 miles should have been the same as for other distances in the same block of distances of 260 miles and over 160 miles (Rec., 477).

In Pennsylvania Sand & Gravel Producers Association Case, 100 I. C. C. 717, which involved rates for distances 200 miles and under, in Duquesne Slag Products Company Case, 92 I. C. C. 554, involving rates for distances 220 miles and under, and in Hopeman Material Company Case, 98 I. C. C. 361, involving rates for distances 375 miles and under, the Commission fixed the differential of 20 cents per ton between joint line and single line for all distances (Rec. 477).

For distances 160 miles and under our joint line differen-
[fol. 171] tial is more than 20 cents per ton, while for distances over 160 miles our joint line differentials are less than 20 cents per ton. In fixing the measure of joint line differentials there should be taken into account not only the question of the additional service involved at the interchange point for the joint haul, but also the fact that the revenue must be apportioned between two or more carriers (Rec., 478).

My Exhibit No. 130 shows the rates from Chattanooga, Tenn. to points on our line in Georgia between Chattanooga and Brunswick, Ga., and my Exhibit No. 131 shows the

rates on sand and gravel from Chattanooga, Tenn. to points in Georgia on the main line of the Southern Railway between Atlanta and the Georgia-South Carolina state line, including the stations between Rome, Ga. and Anniston, Ala., between Rome, Ga. and Attalla, Ala. and stations on the Fort Valley Branch and Columbus Division (Rec., 478).

Defendants' Exhibits Nos. 130 and 131 were received.

Mr. Crane: Both of these exhibits show also what the rates would be to these stations under our interstate mileage scale. The rates from Chattanooga to these stations in Georgia on the Southern Railway are the same as our interstate mileage scale, with the exception of the rates to Dalton, Rome and Atlanta, Ga. (Rec., 478). On August 1, 1925, we revised the rates from Chattanooga to these competitive points so as to be no lower than mileage scales prescribed by the Georgia Commission (Rec., 479).

In April, 1917, the rate of 90 cents was established from Chattanooga to Atlanta and as increased under General Order 28, this rate became $1.10 per net ton. If this rate had remained in effect and later increased 25 per cent under Ex Parte 74, and reduced 10 per cent under 13293; the present rate from Chattanooga to Atlanta would be $1.25, or but 3 cents lower than the rate under our interstate mileage scale (Rec., 479).

However, effective December 22, 1919, during the period [fol. 172] of Federal control the rate of $1.10, then in effect, was reduced to 90 cents, which was the rate then in effect on slag from Birmingham to Atlanta. At that time the rate of 90 cents per ton was also in effect on gravel from Chehaw, Ala. on the Western Railway of Alabama, to Atlanta, Ga. (Rec., 479).

The rate of 90 cents from Chattanooga to Atlanta established December 22, 1919, became $1.02 as increased under Ex Parte 74 and reduced 10 per cent under 13293. Under the revision established by the order of the Georgia Commission the rate on sand and gravel not washed became $1.10 and the rate on gravel washed became $1.20 (Rec., 479).

The rate in effect prior to August 1, 1925, from Chattanooga to Rome, Ga. had its origin in a similar rate maintained in the reverse direction. Sand and gravel are pro-

duced at Rome as well as at Chattanooga. A low rate was maintained from Rome to Chattanooga to meet local competition at the latter point, and since one of our competitors was not willing at that time to raise the rate from Rome to Chattanooga we undertook in 1913 to establish the same rate from Chattanooga to Rome, so that the Chattanooga producers might meet local competition at Rome (Rec., 479-480).

The rate from Chattanooga to Dalton was not originally established by us, and we merely met the rate after it had been already established by the N. C. & St. L. Railway (Rec., 480).

Our records for the months of July, August, September and October, 1925, show there has been no movement from Chattanooga to Rome, Ga. There is a movement, however, of gravel from Chattanooga to Dalton and Atlanta, Ga. (Rec., 480).

To Gainesville, Ga., located on our main line north of Atlanta, the present rate is $1.49 per ton, which is the same [fol. 173] as the rate under our interstate mileage scale rate that is shown in 131. The rates to Atlanta and Dalton, Ga. are less than our interstate mileage scale, but even if the rates to those points were on basis of our interstate mileage scale they would still be lower than the rate to Gainesville, Ga. by 23 cents and 72 cents, respectively (Rec., 480).

During the months of July, August, September and October, 1925, the movement over our line from Chattanooga to Gainesville was greater than the combined movements to Atlanta and Dalton. In other words, our movement on the scale from Chattanooga exceeded the movement to points where we had specific rates lower than the scale (Rec., 482).

The rates from Chattanooga to stations in Georgia on the Georgia, Southern & Florida Railway are invariably made on the basis of our interstate mileage scale. However, the Georgia, Southern & Florida Railway is not a party to the complaint which attacks the rates from Chattanooga to destinations in the states of Georgia, Florida and Mississippi (Rec., 482).

My Exhibit No. 132 shows the rates from Chattanooga, Tennessee, to stations on the Alabama Great Southern Railroad (Rec., 482).

Defendants' Exhibit 132 was received.

Mr. Crane: The Alabama Great Southern Railroad extends from Chattanooga, Tenn. to Meridian, Miss., and there are but few stations on this line which are located in the states of Georgia and Mississippi, most of the stations being located in the state of Alabama. The rate from Chattanooga to Attalla, Ala., is 2 cents less than our interstate mileage scale and with this exception the mileage scale is applicable from Chattanooga to all other stations on the Alabama Great Southern Railroad. There are some movements from Chattanooga to these stations for comparatively short hauls (Rec., 483).

Our present general interstate mileage scale was made applicable over the Alabama Great Southern Railroad effective October 1, 1922. In my Exhibit No. 133 I have shown the former interstate mileage scale of the Alabama [fol. 174] Great Southern Railroad contrasted with our present general interstate mileage scale, and it will be noted that the present scale is substantially less than the former scale which applied from Chattanooga to stations on the Alabama Great Southern Railroad (Rec., 483).

Defendants' Exhibit No. 133 was received.

Mr. Crane: In my Exhibit No. 134 I have shown the rates from Chattanooga to stations on the New Orleans & Northeastern Railroad. Our general interstate mileage scale now applies from Chattanooga to stations on the New Orleans & Northeastern Railroad with the exception of New Orleans, La., to which point there is a specific commodity rate on sand which is higher than our interstate mileage scale (Rec., 483).

Defendants' Exhibit No. 134 was received.

My Exhibit No. 135 shows the present rates on slag from Birmingham and Alabama City, Ala. to points in Georgia on the Southern Railway Company, and also what the rates would be to these stations under the general interstate mileage scale of the Southern Railway (Rec., 484).

Defendants' Exhibit No. 135 was received.

Mr. Crane: The rates on slag from Birmingham and Alabama City to stations on Southern Railway Company

in Georgia are based primarily on our general interstate mileage scale. There are some exceptions to this basis at a comparatively few competitive points. For example, prior to August 1, 1925, the rate on slag from Birmingham and Alabama City to Atlanta was the same as the rate on gravel from Chattanooga to Atlanta, but following the decision of the Georgia Commission the competitive rates from Birmingham and Alabama City to Atlanta were increased so as to be not less than the scale prescribed by the Georgia Commission. The present rate on slag from Birmingham is 10 cents higher and the present rate on slag from Alabama City is the same as the present rate on gravel from Chattanooga to Atlanta (Rec., 485).

[fol. 175] To some extent Birmingham and Alabama City are grouped at the same rates to competitive destinations. For example, to Macon, Ga., the same rate has been applied from Birmingham as from Alabama City, the rate from Alabama City being the same as our interstate mileage scale, the rate from Birmingham being somewhat less than the mileage scale. The average of the distances from Birmingham and Alabama City to Macon is 238 miles, and the present rate of $1.53 reflects the mileage scale for the average distance of 238 miles (Rec., 485).

The rate from Alabama City to Brunswick, Ga., is higher than our interstate mileage scale, but the rates from Birmingham and Alabama City to all of the South Atlantic ports, viz: Jacksonville, Brunswick, Savannah and Charleston are grouped at the same rates. The rates from Anniston, Ala., are also the same as from Birmingham and Alabama City, Ala. to the South Atlantic Ports, the distances from Anniston being less than the distances from either Birmingham or Alabama City (Rec., 485).

The rate from Birmingham to Griffin is also somewhat less than the mileage scale rate from Alabama City to Griffin, being the same as the mileage scale (Rec., 485).

The rates from Birmingham and Alabama City to Columbus, Ga., are also less than the interstate mileage scale. We are not the short line, nor the rate-making line from Birmingham and Alabama City to Columbus, and simply meet at Columbus the rates of our competitors. From Birmingham to Columbus the short line distance is 157 miles over the Central of Georgia Railway, and from

Alabama City to Columbus the short line distance is 188 miles over the Louisville & Nashville Railroad to Sylacauga, Ala., thence Central of Georgia Railway (Rec., 486).

In my Exhibit No. 136 the present rates on slag from Birmingham and Alabama City to points in Georgia and Florida on Georgia, Southern & Florida Railway are shown compared with our interstate mileage scale rates (Rec., 486).

[fol. 176] Defendants' Exhibit No. 136 was received.

Mr. Crane: In general, the rates are predicated on this mileage scale, but there are some few exceptions to this basis, and in one instance the rate is higher than the mileage scale. To Sparks, Ga. and to stations between Sparks and Valdosta, Ga. the rates are slightly less than the mileage scale, being the same as the rates to Valdosta and also the same as the rates from Alabama City to the same stations, the rates from the latter point being made on the mileage scale (Rec., 486).

Mr. Burchmore: I call attention to the fact that there are apparently a number of fourth section departures shown on Exhibit 135.

Mr. Crane: Most of these competitive rates are of very long standing and the effect of the revision which we made on July 1, 1922, was to reduce the rates to points intermediate to these competitive points. The exhibit shows that there are some fourth section departures (Rec., 488).

I was discussing Exhibit No. 136. The rates to Jacksonville shown on this exhibit are somewhat less than the mileage scale, but as previously stated the same rates are applied to all of the South Atlantic ports on slag from Birmingham, Ala., Alabama City, Ala., and Anniston, Ala., and the present rate of $2.03 is approximately an average of the rates that would result if the mileage scale were applied in each instance (Rec., 488).

In my Exhibit No. 137 the rates on slag from Birmingham and Alabama City to destinations on the Alabama Great Southern Railroad are compared with our general interstate mileage scale (Rec., 488).

Defendants' Exhibit No. 137 was received.

Mr. Crane: The present rate from Birmingham to Chattanooga is 7 cents less than our general interstate mileage

scale, while the present rate from Birmingham to Meridian is 5 cents higher than our general interstate mileage scale. The present rate from Alabama City to Chattanooga is 2 [fol. 177] cents less than our interstate mileage scale, while the rate from Alabama City to Meridian is the same as our interstate mileage scale. To points intermediate to Chattanooga and Meridian the rates are in some instances higher than and in other instances lower than our general interstate mileage scale. The so-called mileage scale is applicable from Birmingham to points on the Alabama Great Southern Railroad within 200 miles of Meridian. In one of the exhibits filed by Mr. Aldredge in this case, he showed a rate of 90 cents, I think it was, on slag from Birmingham to Meridian, Miss., that is a rate that is applicable to shipments consigned to the authorities of the city of Meridian (Rec., 489).

The exhibit which was filed by Mr. Aldredge made no qualification as to that rate (Rec., 489).

The rates on slag from Birmingham and Alabama City, Ala. to stations in Mississippi on the New Orleans & Northeastern Railroad are invariably the same as our general interstate mileage scale (Rec., 490).

In my Exhibit No. 138 I have shown the scales of the Southern Railway on sand, gravel, chert, crushed stone, and slag, applicable intrastate between points in the state of Georgia in effect prior to April 1, 1925, and as revised effective April 1, 1925, under order of the Georgia Railroad Commission (Rec., 490).

Defendants' Exhibit No. 138 was received.

Mr. Crane: In the same exhibit is shown the present general interstate mileage scale of the Southern Railway on these commodities (Rec., 490).

The scale of rates on crushed stone and slag in effect prior to April 1, 1925, between points on our line in the state of Georgia was the same as the general interstate scale of the Southern Railway, that was in effect on these commodities prior to July 1, 1922, on which date we established our revised general interstate scale. In other words, [fol. 178] for the period from July 1, 1922, until April 1, 1925, our intrastate scale in Georgia on crushed stone and slag was on a higher level than our general interstate scale

and it was not until April 1, 1925, as a result of the order of the Georgia Commission, that the intrastate scale in Georgia became lower than our general interstate scale (Rec., 491).

The two most important shipping points of crushed stone on our line in Georgia are Stockbridge and Holton, located between Atlanta and Macon, Ga. Crushed stone is also shipped from Ayersville and Toccoa, Ga., on our main line north of Atlanta (Rec., 491).

During the months of July, August, September and October, 1925, the Southern Railway Company originated 8,885 cars of crushed stone, of which but 723 cars originated in the state of Georgia. Practically all of the cars originated in the state of Georgia were destined to points in that state (Rec., 491).

In other words, the movement of crushed stone in Georgia on the Southern Railway is small as compared with the movement over the Southern Railway in other territories. The average loading of these 8,885 cars was 52.7 tons (Rec., 491).

The scale of the Georgia Commission on sand and gravel in effect prior to April 1, 1925, was also on a generally higher level than our general interstate scale (Rec., 491).

The principal producing points of sand on our line in Georgia are Roberts, Gaillard, Rollo, Allen and Zenith on our Fort Valley Branch, and Lumber City on our line between Macon and Brunswick (Rec., 491).

It is true that there were some exceptions to the mileage scale of rates in effect between points in Georgia prior to April 1, 1925, the most important of which were the low rates in effect from points on our Fort Valley Branch to Atlanta, Ga. However, there were regular movements to a [fol. 179] considerable number of destinations under the full mileage scale in effect between points in the state of Georgia, as I shall later show (Rec., 492).

While the revised mileage scale of the Georgia Commission was established April 1, 1925, the specific rates in effect on a lower basis were not cancelled until August 1, 1925 (Rec., 492).

Prior to August 1, 1925, the rate from Gaillard and other points in that vicinity on our Fort Valley branch to Atlanta was 57 cents per ton, for distances ranging from 88 to 98

miles. This rate prior to the increase under General Order 28 was but 30 cents per ton, yielding at that time on 50 tons of sand but $15.00 per car. This low rate of 30 cents per ton was in effect for many years prior to 1918, and reflects a situation that was in existence when in 1895 the Southern Railway acquired the Atlanta & Florida Railroad, which extended from Atlanta to Fort Valley (Rec., 492).

Even before the general increases of 1918 several unsuccessful efforts were made to secure authority from the Georgia Commission to increase these rates. Since authority could not be obtained to increase the low rates in effect from Fort Valley branch to Atlanta, in order to assist our other producers it became about that rates in line therewith were established from Lumber City and other shipping points to Atlanta (Rec., 493).

In my Exhibit No. 139 I have shown the former rates and the present rates on sand from Gaillard, Ga. to destinations in Georgia other than Atlanta, to which there was a movement in July, August, September and October, 1924 and 1925, and also the rates to the same destinations under the general interstate mileage scale of the Southern Railway (Rec., 493).

Defendants' Exhibit No. 139 was received.

Mr. Crane: The first station on this exhibit should be Cornelia, Ga., it is misspelled (Rec., 493).

In the first group of stations located on our main line north of Atlanta there were movements to one or more of [fol. 180] these stations, both in 1924 and 1925. The rates to these stations in effect prior to April 1, 1924, were on a generally higher level than the rates under our interstate mileage scale (Rec., 493).

In the group of destinations on our line between Chattanooga and Atlanta is shown Dalton, Ga., to which point the former rate was $1.50, and the present rate is $1.30 per ton, while the rate under our interstate mileage scale would be $1.49 per ton. In July, August, September and October, of 1924 there was a movement of 139 cars of sand from Gaillard to Dalton, Ga., on basis of rate of $1.50 per ton. The rate from Chattanooga to that place of course is on a very much lower basis than the rate from Gaillard. To points on the Fort Valley branch the former rates were on

a generally higher level than our interstate mileage scale (Rec., 494).

To Rome, Ga., to which there was formerly in effect a specific rate less than the mileage scale, there was a small movement of 5 cars in 1924 and a similar movement in 1925 (Rec., 494).

To Columbus, Ga., there was a movement in 1924, but none in 1925, so that we derived no benefit from the increase of the rate from 79 cents to one dollar. Presumably this sand is now being shipped to Columbus from pits on other lines (Rec., 494).

The rates to points on the Tallulah Falls Railway, except Franklin, N. C., were substantially reduced under the order of the Georgia Commission. The rates formerly in effect to these stations were substantially higher than our interstate mileage scale. It will be noted that to Dillard, Ga. the present rate is $1.40, whereas to Franklin, N. C., the next station, the rate is $1.76, a spread of 26 cents (Rec., 494).

On the second page of the exhibit are shown destinations on the Atlanta division, old line of the Louisville & Nashville Railroad, to which there were shipments of sand from Gaillard, Ga. The rates to these stations were formerly on a higher level than the rates under our interstate mileage [fol. 181] scale and the rates to these stations were substantially reduced under the order of the Georgia Commission. In this comparison I have also shown rates to these stations from Knoxville, Tenn. These stations are reached from Knoxville over the single line of the Louisville & Nashville Railroad, whereas from Gaillard they are reached by joint line over the Southern Railway and the Louisville & Nashville Railroad. The present rates from Knoxville to these stations would be reduced by the application of our interstate mileage scale, and as previously shown, the Georgia scale which applies from Gaillard to these stations is on a relatively lower basis than our interstate mileage scale (Rec., 495).

In my Exhibit No. 140, I have shown the rates in effect prior to August 1, 1925, and the rates which were established on August 1, 1925, and now in effect from Gaillard,

Ga., Montgomery, Ala., and Chattanooga, Tenn., to Atlanta, Ga., compared with the rates under our interstate mileage scale, and the rates prescribed by the Commission in a number of cases there shown (Rec., 495).

Defendants' Exhibit No. 140 was received.

Mr. Crane: There is one error in that exhibit, the present rate on gravel from Montgomery to Atlanta should be $1.30 instead of $1.20. The present rate on sand from Gaillard to Atlanta, which is on basis of the Georgia Commission scale is substantially lower than any of the scales prescribed by the Commission on sand, gravel, crushed stone or slag, shown in the exhibit, including the recent scale prescribed by the Commission for application in the eastern part of central freight association territory in Pennsylvania Sand & Gravel Producers Association Case, 104 I. C. C. 717. The rate that would result under the application of Southern Railway interstate mileage scale is lower than any of the scales prescribed by the Commission, with the exception of the scale prescribed in the case last mentioned (Rec., 496).

The Georgia scale as a maximum scale became effective on April 1, 1925, but we did not cancel specific rates which [fol. 182] were lower than that scale until August 1, 1925.

The statement which I previously made with respect to the rate from Gaillard to Atlanta is also true of the present rates from Montgomery, Ala., to Atlanta, Ga., except that the present rate on gravel is the same as the rate prescribed in the Pennsylvania Producers Case (Rec., 496).

The present rate on sand from Chattanooga to Atlanta is lower than any of the scales prescribed by the Commission, and this is also true of the rate on gravel, except that the rate prescribed in the Pennsylvania Sand & Gravel Producers Association Case is the same as the present rate from Chattanooga to Atlanta. The rate under the Southern Railway interstate mileage scale, if applied from Chattanooga to Atlanta, would be lower than any of the scales prescribed by the Commission, with the exception of the scale under the Pennsylvania Sand & Gravel Producers Association Case (Rec., 497).

During the months of July, August, September and October, 1925, the Southern Railway Company originated 11,512 cars of sand and gravel, of which 2,798 cars origi-

nated in the State of Georgia. They were all sand. The movement from points on our line in Georgia consists entirely of sand, and the scale of rates prescribed by the Georgia Commission on sand is lower than any of the scales prescribed by the Interstate Commerce Commission to which I have previously referred, including the present scale prescribed for application in the eastern part of central freight association territory (Rec., 497).

I do not have the distribution of the 2,798 cars of sand moving in Georgia, but it would not be true that all but a small part moved to Atlanta (Rec., 498).

In my Exhibit No. 141, I have compared the intrastate scales of the Southern Railway in South Carolina, fixed by [fol. 183] the South Carolina Commission, with the general interstate scale of the Southern Railway. In South Carolina the same scale applies on gravel washed or unwashed, and the scale of rates on crushed stone is the same as the scale of rates on gravel (Rec., 499).

Defendants' Exhibit No. 140 was received.

Mr. Crane: The scale of rates on sand in South Carolina is also the same as the scale of rates on gravel and crushed stone for distances 80 miles and under and for distances over 300 miles, but for distances 300 miles and over 80 miles, the South Carolina scale on sand is lower than the scale on gravel and crushed stone. The general interstate mileage scale of the Southern Railway is on the somewhat lower basis than the South Carolina scale on gravel and crushed stone and also on sand for distances 80 miles and under and for distances over 300 miles (Rec., 499).

The principal shipping point of sand on our line in South Carolina is Gilbert, located between Columbia, S. C. and Augusta, Ga. Sand is also shipped to some extent from Spartanburg and a few other points on our line in South Carolina. While the scale of the South Carolina Commission on sand for distances 300 miles and over 80 miles is less than our general interstate mileage scale, as a matter of fact the movement from Gilbert, S. C. to destinations in North Carolina greatly exceeds the movement to destinations in South Carolina and our general interstate mileage scale applies from Gilbert, S. C. to destinations in North Carolina on our line (Rec., 500).

The principal shipping point of gravel on our line in South Carolina is Wateree, located between Columbia and Sumter. The South Carolina Commission scale applicable to gravel is on a somewhat higher level than our general interstate mileage scale. There is also a movement of gravel from Wateree, S. C. to destinations in North Carolina on basis of our general interstate mileage scale (Rec., 500).

[fol. 184] The principal shipping points of crushed stone on our line in South Carolina are Columbia, Park Hill or Trenton, located between Columbia and Augusta, Beverly or Liberty, located between Seneca and Greenville, and Pacolet, located between Spartanburg and Columbia. There are other shipping points of lesser importance. The South Carolina Commission scale on crushed stone is generally higher than our interstate mileage scale (Rec., 500).

There are comparatively few exceptions to the application of the South Carolina scales on these commodities (Rec., 500).

One instance is the rate on gravel from Wateree, S. C. to Charleston, S. C. As a temporary proposition and at the request of the South Carolina Commission we undertook several years ago to establish rate of one dollar on gravel from Wateree, S. C. to Charleston, S. C., for a distance of 110 miles. The rate under the South Carolina Commission scale and our interstate mileage scale for this distance is $1.15. The rate from Wateree to Charleston was established to cover a movement consigned to the city of Charleston, and we were asked to put in this rate as a temporary proposition on account of certain rates in effect from competing points (Rec., 501).

Defendants' Exhibit No. 142 was received.

In Exhibit 142, I show the rates on sand from Gilbert, South Carolina, to points in North Carolina on the Southern Railway, to which there was a movement in July and August, 1925. I submit this statement merely for the purpose of showing that our interstate mileage scale is applicable to regular movements from Gilbert, S. C. to points on our line in North Carolina (Rec., 502).

Mr. Burchmore: I object to the exhibit which only purports to show a comparison of the mileage scale between those points with the mileage scale between those points,

comparing the same thing with the same thing. It is incompetent, irrelevant and immaterial. The rates from South Carolina points to points in North Carolina are not at issue in any of these complaints (Rec., 502).

[fol. 185] Mr. Walker: The Commission is asked to prescribe a scale here and we are showing what the rates are between points in North Carolina and South Carolina, and the rates on which the business moved. It is only offered for comparative purposes (Rec., 502).

Exam. Waters: Go ahead, the objection is noted (Rec., 503).

There is also some movement of sand from Gilbert, S. C. to some of our stations in Georgia on our main line north of Atlanta, and in my Exhibit No. 143, I have compared the former rates and the present rates on sand from Gaillard, Ga. to those stations, as well as what the rates would be under our interstate mileage scale, with the rates from Gilbert, S. C. to those same stations (Rec., 503).

Defendants' Exhibit No. 143 was received.

Mr. Crane: The rates from Gilbert, S. C. are on the basis of our interstate mileage scale. The rates from Gaillard, Ga. to the same stations are on the basis of the Georgia Commission's mileage scale. I want to call attention to the fact that our present interstate mileage scale reflects a lower basis generally than was in effect from Gaillard to those stations prior to April 1, 1925 (Rec., 503).

My Exhibit No. 144 shows the present North Carolina intrastate scales on sand, gravel, chert, slag and crushed stone, compared with the general interstate mileage scale of the Southern Railway (Rec., 504).

Defendants' Exhibit No. 144 was received.

Mr. Crane: There is in effect in North Carolina a scale of rates on unwashed clay gravel applicable to shipments consigned to municipal, county or state authorities, which is on a generally lower basis than our interstate mileage scale. This scale was established by the North Carolina Commission in 1913 on complaint of shippers located at Lellington, N. C. on the Norfolk Southern Railway. So far as I have been able to develop, there is no movement of clay

[fol. 186] gravel from points on our line under this scale (Rec., 504).

The single line scale of the North Carolina Commission on washed gravel, sand, chert, slag and crushed stone closely approximates our general interstate mileage scale, the rates for distances under 150 miles being on a somewhat higher level, and for distances 150 miles and over on a somewhat lower level than our general interstate mileage scale. The differentials between the joint and single line scales are lower under the North Carolina interstate scale than under our general interstate mileage scale (Rec., 504).

Sand is shipped from Ronda, Elkin, Siloam, Donnaha, N. C. on our North Wilkesboro Branch, extending out from Greensboro, N. C. It is also shipped from Catawba, on our line between Salisbury and Hickory, and from Balfour, on our line between Asheville and Spartanburg. Sand and gravel is shipped from Grovestone, on our line between Marion and Asheville. The movement from these points is on basis of the mileage scale shown in my Exhibit No. 144 (Rec., 505).

Crushed stone is shipped from Woodleaf, on our line between Winston-Salem and Barber, from Pelham or Stacey, on our line between Danville, Va. and Greensboro, N. C., from Fletcher and Balfour, on our line between Asheville and Spartanburg, and from Hot Springs, on our line between Asheville, N. C. and Morristown, Tenn., and from Grovestone or Swannanoa, on our line between Asheville and Marion, and the movement is on the basis of the mileage scale shown in my Exhibit No. 144 (Rec., 505).

The movement of sand, gravel and crushed stone over the Southern Railway is greater from points in South Carolina and North Carolina than from points in Georgia and Alabama (Rec., 505).

This completes my testimony with respect to the North Carolina rates (Rec., 505).

[fol. 187] In my Exhibit No. 145 is shown the scale of rates on sand and gravel applicable on our Knoxville Division between Chattanooga and Bristol, Tenn., and also our Tennessee scale of rates on crushed stone (Rec., 506).

Defendants' Exhibit No. 145 was received.

This exhibit also shows the rates under our general interstate scale. The scale of rates on sand and gravel shown

on this exhibit applies from Chattanooga to points in Tennessee on our Knoxville division. Sand and gravel is not only produced at Chattanooga, but also at Lenois City, 88 miles east of Chattanooga, and at Knoxville, 111 miles east of Chattanooga. This scale for the shorter distances is on a higher level and for longer distances on a lower level than our interstate mileage scale. There is a great deal of sand all through the East Tennessee section and this scale was established many years ago to meet local competition to those various points. However, the movements via rail lines are largely confined to short hauls (Rec., 506).

The Tennessee scale on crushed stone is the same as our interstate mileage scale. Crushed stone is shipped in considerable quantities from Mascot and other points on our line in the vicinity of Knoxville, and moves on basis of our interstate mileage scale (Rec., 507).

There are no joint line scales in Tennessee (Rec., 507).

In my Exhibit No. 146 are shown the rates on crushed stone from Mascot, Tenn. to points to which there was a movement in July and August, 1925, compared with the rates under our interstate mileage scale. Almost without exception, the rates are on the basis of our interstate mileage scale, there may be one instance, from Rockport, Tenn., where the rate is higher than the mileage-scale. These are commodity rates, figured on the scale (Rec., 507).

Exhibit 146 was received.

By Mr. Burchmore:

Q. You just get out the scale and get them lined up, you don't look in any other tariff, do you?

[fol. 188] A. Whether they are published on the scale or specifically in the tariffs, they are commodity rates (Rec., 508).

By Exam. Waters:

Q. That is done more for convenience, isn't it?

A. Yes sir.

By Mr. Burchmore:

Q. No, I think your answer was that you just get out the mileage scale and figure out how far it is, and then figure out how much your rate is (Rec., 508).

A. Isn't that a very simple thing to do?

Q. But the Examiner thought you could look in a tariff and see that the rate from Mascot to Asheville is 117 cents (Rec., 508).

A. You can by taking the distance table and finding out what the distance is from Mascot to Asheville.

Q. And then looking at the scale?

A. There is no objection to the form of publication we have, and I don't believe you ship from Mascot (Rec., 508).

Exhibit 147 shows the intrastate scale of the Southern Railway in Virginia, compared with the general interstate mileage scale of the Southern Railway.

Defendants' Exhibit 147 was received.

Mr. Crane: These are all single line scales shown in this exhibit, there are no joint line intrastate scales in the state of Virginia. Sand or gravel are shipped from Alexandria, Va., from Danville, Va., and from Mowbray, Va., points on our line in the state of Virginia. The principal shipping points of crushed stone on our line in Virginia are Culpeper on our main line, and Riverton and Strasburg on our Harrisonburg branch (Rec., 509).

In my Exhibit No. 148, I am showing the rates on sand and gravel from Alexandria, Va., to points on the Southern Railway main line and the Harrisonburg branch (Rec., 509).

[fol. 189] Exhibit No. 148 was received.

The specific rates in effect from Alexandria to points on our line in Virginia are on a higher basis than the intrastate mileage scale in Virginia. There is a regular movement of sand and gravel from Alexandria to points on our line in Virginia. The general interstate mileage scale of the Southern Railway is lower than either the specific rates from Alexandria to those stations or what the rates would be under the intrastate mileage scale in Virginia. These rates from Alexandria are specific commodity rates (Rec., 509).

On my Exhibit No. 149, I have shown our Alabama intrastate scales on sand, chert, crushed stone and slag, compared with our general interstate mileage scale (Rec., 510).

Defendants' Exhibit No. 149 was received.

Mr. Crane: The intrastate scale on sand, chert and crushed stone was fixed by the Alabama Legislature in 1907, when we were compelled, however, to establish the reduced scale at that time, we were not permitted to increase specific rates which were on a lower basis than the reduced scale. The general interstate mileage scale of the Southern Railway closely approximates the level of the intrastate scales in Alabama (Rec., 510).

There is no joint line scale in Alabama. We have in effect from certain of our stations, such as Jones and Barnsville, producing points on our line north of Selma, the 79 cents rate on sand to points in the Birmingham district, but there is practically no movement from points on our line (Rec., 511).

For the shorter distances, our interstate rates are considerably lower (Rec., 511).

In Alabama for the months of July, August, September and October, 1925, the Southern Railway Company originated but 885 cars of sand and gravel, and but 114 cars of crushed stone. I haven't any specific figures on slag, I think Mr. Ribe has already supplied the figures on that, [fol. 190] we don't have any separate classification on slag under our traffic statistics. The principal movement which we had during those months in the state of Alabama was several hundred cars which moved from Jackson, Ala. to Calvert, Ala. under a special rate applicable to shipments consigned to state, county and city authorities (Rec., 511).

In my Exhibit No. 150, I have made extracts from a decision of the Alabama Public Service Commission in Docket No. 4492 involving the rates on asphaltic limestone from Margerum, Ala. (Rec., 511).

Mr. Burchmore: I object to this exhibit on two grounds; first under Rule 13 of the Rules of Practice, unless it is accompanied by a copy of the entire decision for inspection of counsel for purposes of cross examination; second that the subject matter is entirely outside of the scope of these proceedings (Rec., 511).

Mr. Walker: I think that question has been ruled on, and I don't think it is necessary to take up the time of the Commission in arguing it (Rec., 512). The rule requires a tender of the copy for inspection and this is only an extract or portion of the decision.

Mr. Walker: We will furnish you with a copy of the decision.

Mr. Burchmore: I am asking for that and then I make the second objection that it is wholly outside of the scope of the case.

Mr. Cotterill: In the second objection I concur. I don't understand the relevancy of a citation from some decision of the Alabama Commission in which it is concluded that each commodity not here involved should be accorded rates the same as on a commodity here involved. If, for instance, we apply the ordinary test of evidence, and on the theory that this is the only evidence as to that commodity and what rates it should take, it would be unproductive of any practical results for the reason that that commodity not being before you here, there would be nothing you [fol. 191] could do with respect to it, it being utterly irrevelant to any phase of this proceeding.

Mr. Walker: Mr. Aldredge came here for the Alabama Commission, and offered testimony to the effect that there should be a different rate on crushed stone and gravel than on sand, etc., for the reason of the difference in value, etc. Now, this is offered to show that when a similar question was presented to the Alabama Commission recently, wherein we contended that there should be a higher rate on this commodity involved before the Alabama Commission than on crushed stone and gravel, the Alabama Commission found that there should not be different rates on that commodity, although the values were substantially greater than the difference in value between sand, and crushed stone and gravel (Rec., 513).

Mr. Cotterill: I don't yet get the connection, and the commodity with which the Alabama Commission was dealing in that proceeding is not the commodity involved here (Rec., 513).

Mr. Walker: And it is offered for the very purpose of showing that the Alabama Commission felt that the rates which we are proposing here are not unreasonable rates to apply in Alabama on crushed stone (Rec., 513).

After further discussion as to the relevancy and effect of the decision, the witness proceeded with his testimony without ruling on the objection.

Mr. Crane: In My Exhibit No. 151, I have compared the interstate mileage scales of the Southern Railway with the

scales prescribed by the Commission in the cases which are shown, and on the second page of the exhibit I have made certain excerpts from decisions of the Commission (Rec., 515).

Defendants' Exhibits Nos. 150 and 151 were received.

Exhibit No. 152 is merely a comparison of our scale with scales prescribed by the Commission in the Memphis-Southwestern, Shreveport and the Natchez cases. Defendants' Exhibit No. 152 was received.

[fol. 192] Mr. Brooker: The comparison on Exhibit 152 is with the interstate scale. There is an inference here that the Commission in that decision prescribed that scale in Nebraska. It was just a scale that was shown in that particular decision and the Commission did not prescribe it in that case (Rec., 516).

Mr. Crane: They prescribed higher than that for distances over 130 miles (Rec., 516).

Mr. Brooker: You may be correct in that, but they did not prescribe that scale in that scale.

Mr. Crane: That is probably true, but what they actually did was to prescribe in the second case here shown a scale which was higher.

Exam. Waters: The decision will speak for itself.

Mr. Crane: In my Exhibit No. 153, I have shown the Southern Railway interstate mileage scale in comparison with the scales prescribed by the Commission on crushed stone, slag, sand and gravel, in the eastern part of central freight association territory and in trunk line territory.

Defendants' Exhibit No. 153 was received.

In Exhibit 154 I have made certain excerpts from the Commission's decision in the Pennsylvania Sand & Gravel Producers Association Case (Rec., 517).

Defendants' Exhibit No. 154 was received.

The Southern Railway scale referred to in the excerpts in my Exhibit 154 is our present general interstate mileage scale (Rec., 518).

In my Exhibit No. 155, I have shown certain minimum rates on salt and on fluorspar which were prescribed or considered by the Commission in the cases there shown.

Defendants' Exhibit No. 155 was received.

Mr. Crane: I have shown the rates and the rate per ton [fol. 193] mile and the car revenue and the car-mile revenue. I have also shown at the bottom of the exhibit the rates for various distances under our present general interstate mileage scale, the rates per ton mile, per car and per car mile. The mileage to Chicago should be 1,004 instead of 100 miles, and the calculations are based on 1,004 miles (Rec., 518).

My exhibit No. 156 shows the so-called Meridian scales prescribed by the Commission on chert, sand and gravel, and also on slag and crushed stone, with the general interstate mileage scale of the Southern Railway (Rec., 518).

Defendants' Exhibit 156 was received (Rec., 518).

Mr. Crane: In the Meridian Case, the Commission called upon the carriers to submit to them certain proposed scales, and during the period of Federal control when that request was made, the carriers were directed, rather the United States Administration directed that the scales which had been proposed to the Georgia and Alabama Commissions in 1916 and 1917 should be submitted to the Interstate Commerce Commission in response to their request in the Meridian Case. The Alabama interests in the Meridian Case urged the Commission, and the Commission agreed with them that the scales prescribed in the Meridian Case should not be used as the basis for a general revision throughout the Southern territory. As a matter of fact, the Alabama interests urged the Commission in the Meridian Case to apply between Meridian and Alabama points intrastate scales in effect in Alabama. If it had been done by the Interstate Commerce Commission, so far as sand and gravel is concerned, the scale now applicable between Meridian and Alabama points would be on a substantially higher level than the scale prescribed by the Commission in the Meridian Case on sand and gravel, and which the Alabama complainants in this case have used as the basis of their scale. As indicating that it was never intended, certainly by the Southern Railway Company, to [fol. 194] apply the scales on sand and gravel which were submitted to the Georgia and Alabama Commissions in 1916 and 1917 for general interstate application, I refer back to my Exhibit No. 128, which shows the scale of rates in effect prior to July 1, 1922, applicable between points

on our line east of Atlanta, which scale of rates was adopted by us in the general revisions of interstate rates made on January 1, 1916, as the result of the Commission's decision in Fourth Section Violations in the Southeast, and that is the scale, the one shown on my Exhibit No. 128, that is the scale which we intended for general interstate application over our line. Since that time, as I have already explained, that scale has been reduced as the result of the revision which we made on July 1, 1922 (Rec., 520).

In other words, I think the Meridian scale is too low. I should also mention that it was prescribed between Meridian, Birmingham, Selma, Demopolis and Mobile, on the one hand, and points in Alabama within 200 miles of Meridian, and although those scales on the commodities in the Meridian case had been in effect approximately 4 years, not one of them has been extended beyond the territory prescribed by the Commission, by the Alabama Commission intrastate in Alabama. In other words, they have not recognized any one of those scales beyond the territory fixed by the Interstate Commerce Commission in the Meridian Case (Rec., 520).

The Meridian scale is used by the complainants, as I understood their testimony, and it dated back to 1916 and 1917, when it was submitted in Georgia and Alabama for intrastate application only. I think it is undoubtedly true that no producer or shipper or receiver of sand and gravel participated in the Meridian case. The fact of the matter is the slag scale prescribed in that case undoubtedly moves more traffic than the sand and gravel scale (Rec., 521).

Cross-examination:

[fol. 195] I didn't come prepared to illustrate what situations might develop that would permit the railroads to depart from the maximum scale and apply special treatment, but I can say, for instance, we have an extremely low rate on sand, shown by the record from LaGrange and Salisbury on our Memphis Division to Chattanooga, Tenn.; it is 90¢ per ton, and there is some movement under that rate, I should say 50 or 60 cars per month; that rate was put in so that LaGrange and Salisbury, Tenn., might ship sand into Chattanooga, Tenn., in competition

with Chattanooga producers. Even the complainants' scale would make a rate of $1.30 from LaGrange and Salisbury to Chattanooga. If the scale rate was applied from LaGrange and Salisbury to Chattanooga there would not be any movement of sand from LaGrange and Salisbury to Chattanooga. All we want the Commission to do is to prescribe a maximum scale of rates and allow us leeway in determining its application (Rec., 522).

We certainly want the right to consider a proposition on its merits where the maximum scale does not permit a particularly producing point to ship to a certain market, and have a discretionary right to depart from the scale where competitive conditions required it. My illustration of the movement of one product to Gainesville, Ga., which exceeded that to Atlanta, was to show that there was a very substantial movement from Chattanooga to Gainesville on a rate which was substantially greater than the right to Atlanta if the Atlanta rate were made on the full mileage scale.

No, I would not say that the movement from Chattanooga to Gainesville generally exceeds the movement from Chattanooga to Atlanta. No, I do not have the figures for [fol. 196] total movement in Georgia on roads other than our own, which I gave you for 4 months, and that was 2700 cars (Rec., 523).

Yes, it might be that there would be a number of departures from the mileage scale but the public does not suffer from that. Yes, of course, I have in mind departures from that scale to meet competitive conditions only so long as you do not create undue discriminations (Rec., 524).

If we attempted to depart from that scale, which resulted in discriminations, any party would have the right to protest to the Commission before such action is taken and have a hearing. We are only going to charge the maximum mileage scale where we can do so, but if it can be avoided, we don't want to have the adjustment foreseen so as to prevent meeting a competitive situation. Yes, I am proposing the Southern Railway maximum mileage scale. The movement from Salisbury and LaGrange to Chattanooga is exclusively over our line. I do not think there is any movement from Gaillard, Ga., to Chattanooga exclusively over our line (Rec., 525).

I didn't say we wanted to reduce our charges for the producers at Salisbury and LaGrange in order to put them into the Chattanooga market in competition with Chattanooga producers, but I say we ought to have the right to do it, and use that merely as an illustration. Yes, I think the Gaillard producers should have the same consideration as the LaGrange and Salisbury producer if he wanted to get into the Chattanooga market. When I say the same consideration, I mean the cut would not necessarily have to be the same (Rec., 526).

That would not determine the commercial necessity. If we let our people into Chattanooga by cutting the rates, the Alabama Great Southern might want to do the same thing, and I think it ought to have the right to do so. I [fol. 197] do not think that we are going to make any particular departure, but it does seem to me that we ought to have the right, if we are to promote the movement of any kind of traffic, not particularly sand and gravel, to meet situations as we find them. No, I do not think the cutting of the rate by the Alabama Great Southern and Southern to Chattanooga would necessarily monopolize that market against other shippers; it may be that the very life of a particular sand pit may depend on their having competitive rates (Rec., 527).

In proposing this particular scale as a maximum scale, I do not know the views of the other lines respecting lower rates being made effective in individual instances where circumstances warranted, but speak only for the Southern Railway System. So far as our lines are concerned, any scale which we ever propose is proposed as a maximum mileage scale, and I think it must follow that it is proposed in contemplation of circumstances which in our judgment warranted lower rates in individual instances (Rec., 528).

I would not care to commit another carrier upon that subject. The Southern Railway interstate scale has general application from different divisions of our system, which operates in both the plain, coastal and mountain regions of the South (Rec., 529).

We have not felt that in the formulation of any mileage scale for our lines it is possible to take into account all of the different transportation characteristics on different parts of our line, where there are extremes of differences

in the same territory and over the same lines, as, for example, North Carolina, the conditions are different on the main line from those on the Asheville-Salisbury line. There are operating details in the mountainous regions called difficulties, and there are divisions over which, by reason of grades, curves, etc., transportation costs are [fol. 198] relatively greater than on the more favorable operating divisions. The most we can do in devising a comprehensive rate structure is to be guided by some thought of averaging the various instances and conditions as to operating details (Rec., 530).

I have referred to one or two specific rates lower than the mileage scales in Carolina area. So far as North Carolina is concerned, I believe there is but one specific rate intrastate lower than the mileage scale, and that is on crushed stone from Stacy to Wilmington, and thus far we have been unable to secure authority from the North Carolina Commission to cancel that rate. In the past, we have had other specific rates which we were authorized by the North Carolina Commission to cancel after it prescribed its new scale in 1921, with the possible exception of the rate from Stacy to Wilmington. I believe the same rate from Stacy also applies from Mount Airy on the A. & Y. to Wilmington. I might also refer in South Carolina as to the departure we made from the scale in the rate from Wateree, S. C., to Charles due to the departure made from Columbia to Charleston. The departures from the application of the mileage scale, so far as I know, are comparatively few in that territory (Rec., 531).

Of the total number of 2790 cars, so far as Gaillard is concerned, I would say that slightly over 50% of the movement from Gaillard is to Atlanta. I cannot make an estimate off-hand what proportion of the 2798 cars were from Gaillard. I think the Gaillard man should tell you the normal movement of sand from Gaillard and Rollo, particularly to Atlanta. I can tell you what the movements were in those months that I stated to you yesterday.

Mr. Brooker: We expect to put in all this testimony as to the movement from our shippers represented here.
[fol. 199] Mr. Crane: Of course, he is merely going to show the movement from Gaillard; what I was talking about was all the shipments originating on our line in Georgia (Rec., 532).